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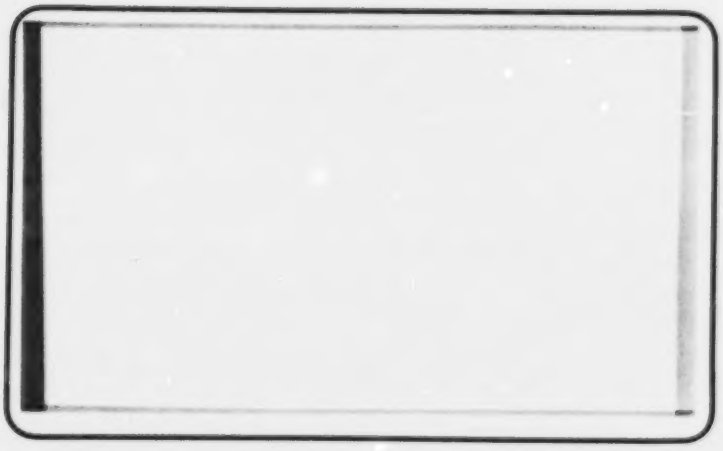

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LANDLORD & TENANT REVIEW COMMITTEE

REPORT TO
THE HONOURABLE MAUREEN HEMPHILL,
MINISTER OF HOUSING

FEBRUARY 1987

Manitoba

Housing

Property Management and
Landlord and Tenant Affairs

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Winnipeg, Manitoba, CANADA
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February 20, 1987

Honourable Maureen Hemphill
Minister of Housing
Province of Manitoba

Dear Madam:

I am pleased to submit to you the report of the Landlord and Tenant Review Committee on the Residential Rent Regulation Act, the Landlord and Tenant Act and their administrations.

Respectively submitted on behalf of the Committee,

Don Ilich

Don Ilich
Chairperson

REPORT OF THE

LANDLORD & TENANT REVIEW COMMITTEE

ON THE RESIDENTIAL RENT REGULATION ACT

AND THE LANDLORD AND TENANT ACT

FEBRUARY 1987

Preface

The Minister of Housing established a Committee to review the Residential Rent Regulation Act, the Landlord and Tenant Act, and their respective administrations in August 1985. The need to examine the Acts and administration, with a view to consolidating and streamlining them, was felt to be a priority item by the Department of Housing which took over responsibility for the Landlord and Tenant Act (and the Rentalsman) in September 1982 from the Department of Consumer Affairs. Subsequently, the Rentalsman's Office was amalgamated with the Rent Regulation Bureau.

The review was welcomed by landlords and tenants alike as they recognized that the Landlord and Tenant Act had not been reviewed since its inception in 1970 and the Residential Rent Regulation Act, while proclaimed more recently in 1982, had several irritating aspects, from the consumer's point of view, which required review. Both landlord and tenant organizations welcomed the opportunity to examine the administration of the two Acts, which they felt required numerous changes in order for them to receive fairer treatment.

The Minister of Housing established a committee composed of landlord representatives, tenant representatives, civil servants, and a representative of the Rent Appeals panelists. While recognizing that it would be difficult to achieve consensus because of each party's individual needs and concerns, the Minister felt that much could be gained by a process in which all three parties grappled with the issues together. The Minister expressed the intention of acting on those items in which consensus was achieved.

Committee Composition

Chairperson, Don Ilich, Assistant Deputy Minister, Landlord and Tenant Affairs Division.

Landlord Representatives:

Lewis Rosenberg, Apex Realty, for the Professional Property Managers Association.

Sid Silverman, President, Manitoba Landlords Association.

Tenant Representatives:

Mel Holley, Legal Aid Manitoba, for the Winnipeg Housing Concerns Group.

Ken Gibbons, University of Winnipeg, for middle income tenants.

Department Representatives:

Gary Julius, Executive Director of Support Services and former Director of the Landlord and Tenant Affairs Branch.

Ross Lawrence, Director of the Appeals Branch.

Joe Locke, Rentalsman (Roger Barsy and Lucille Andrews filled in for Mr. Locke after his unfortunate death).

Hollis Singh, Director of the Landlord and Tenant Affairs Branch (joined the Committee after his appointment in October of 1986).

Rent Appeals Panelists:

Marianne Bossen.

Alternates:

Danny Akman, A. Akman & Son Ltd., for the Professional Property Managers Association.

Michel Mignault, LADCO, for the Professional Property Managers Association.

Lilly Kaplan, Secretary, Manitoba Landlords Association.

Doug Martindale, Stella Mission, for the Winnipeg Housing Concerns Group.

Phyllis Mooney, middle income tenants.

Georgina Bowman, Winnipeg Housing Concerns Group.

Bob Andrews, Deputy Coordinator of Appeals, for Coordinator of Appeals.

Secretary, Martyn Glassman.

Acknowledgements

The Committee would like to acknowledge the support it received in numerous ways from the following people: Bonnie Groening who with great dedication applied her word processing skills to producing this report; Barbara Mathison who assisted in arranging meetings; Heather Jaculak and Darlene Kosowicz for prepreparing the Committee's minutes; Pat Hancock, Adrienne Gauthier, and Cathy Emile who assisted in a variety of ways; Irwin Nitsch for statistical support; Professor M. Bernard Nepon for his legal advice; and Tom McMahon, Stu Whitley and the staff of the Constitutional Law Unit of the Department of the Attorney General.

Process

The Committee met, for the most part, once a week from September 1985 to February 1987. It decided to review the Residential Rent Regulation Act (R.R.R.A.) first, followed by the Landlord and Tenant Act (L.T.A.), and then the administration. However, as it was often impossible to separate discussions and issues concerning the administration, administrative recommendations are to be found throughout the report and not exclusively in Part IV, Administration.

In reflection, creating a Committee with diverse interests and concerns naturally entailed, for its successful functioning, a long period of time in which each person developed an understanding, awareness and sensitivity (but not necessarily of agreement) for the concerns of the others. This growing sensitivity resulted in an easier working relationship as the months passed and is reflected in the greater degree of consensus (and a shorter review time) found in Part III, Landlord and Tenant Act. Part of this smoother sailing can also be attributed to the creation of a sub-committee which allowed for better communication between parties.

The report is structured into six parts: Summary, R.R.R.A., L.T.A., Administration, Residential Tenancies Board/Appeals, and Other Concerns. The Committee decided that the report should clearly reflect degrees of consensus as well as an indication of the position taken by those who may have dissented (with attention drawn to those dissenters). As a result, the report contains: "Recommendations" or unanimous decisions; Partial Consensus decisions in which there was unanimity but someone disagreed with part of the decision; Near Consensus decisions where only one person dissented; No Consensus decisions where one or more landlord and tenant

and one other member dissented; and in one case, a Landlord and Tenant Consensus to indicate that landlords and tenants were in agreement but two other members did not concur.

Committee members had several opportunities to reflect on the decisions and to adjust their positions: during and after the initial review of each Act as well as after receipt of the various drafts. While possibly prolonging the process, it was felt that this was essential for a thorough review to occur.

In conclusion, the Committee exhibited great dedication by spending many hours in reviewing the legislation while at the same time carrying on their own regular jobs. They also exhibited a high degree of commitment to the process despite mistrusting the Government or being subjected to a similar mistrust held by members of their organizations. While not necessarily changing their positions on key issues, each and every person on the Committee developed a greater appreciation for the problems and concerns of others.

Finally, as a result of having both landlords and tenants sitting down together to make recommendations, many of the decisions were arrived at by compromise. The landlords and tenants, therefore, want it to be made clear to the Minister that it is their desire that the Recommendations in the report should be considered as a package and that accepting some decisions and not others would destroy the compromises and agreements made by landlords and tenants with each other.

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LANDLORD AND TENANT REVIEW COMMITTEE

PART I: SUMMARY

The report of the Review Committee contains well over one hundred recommendations ranging from major changes to the Acts to numerous housekeeping measures. Many of the decisions that were agreed to were arrived at by mutual agreement of landlords and tenants (a logical outcome of having all parties meeting together). This being the case, it is important for the Minister to keep in mind that the decisions should be regarded as a package and that rejecting one decision could upset agreements made by landlords and tenants: i.e. landlords agreed to a greater delineation of their responsibilities on the assumption that the Residential Tenancies Board (resulting in speedier orders for possession) would be implemented, while tenants agreed to liberalizing the voluntary vacate provisions in return for landlords agreeing to tighten up regulation of repair and maintenance aspects.

Of great significance is the proposal for the amalgamation of the Residential Rent Regulation Act and the Landlord and Tenant Act into **a single residential tenancies act.** It is hoped that this streamlining will result in greater understanding by consumers of their rights and duties as well as allow for fairer treatment by the administration.

Part of the rationale for having one act is to facilitate the creation of a single jurisdiction **housing tribunal (Residential Tenancies Board)** to replace the current fragmented structure: City of Winnipeg, Small Claims Court, Rentalsman, Rent Appeals and Court of Queens Bench. Such a measure it is hoped will result in speedier and fairer resolution of disputes as the current fragmentation results in repair disputes taking over a year to resolve, and orders for possession and evictions and recovery of damages are often not dealt with consistently or speedily.

Many of the proposals in the report are aimed at **removing administrative and statutory irritants** experienced by both landlords and tenants. Numerous recommendations made by the Committee concern improving their treatment by the administration. These proposals range from having Rent Regulation Officers provide written reasons for their decisions, to removing the practice of Rentalsman's Officers of being both investigator/mediator and adjudicator (judge and jury).

The Committee has also outlined a greater **education and information** role to be played by the Landlord and Tenant Affairs Branch so as to ensure that both landlords and tenants are aware of their rights and duties. It is expected that the expansion of efforts in this area will act to prevent disputes and problems from arising. In order to facilitate this process, the Committee is recommending the creation of a **"Tenant-Landlord Advisor"** within the Landlord and Tenant Affairs Branch.

Another major recommendation aimed at prevention of disputes is the proposal to require landlords, who wish to collect **security deposits,** to complete **condition reports.** The Committee feels strongly that this will lead to both landlords and tenants fulfilling their obligations more honestly and will reduce the number of security deposit disputes (which currently account for over one half of the Rentalsman's case load).

With regards to the **Residential Rent Regulation Act,** landlords and tenants could not reach agreement on proposals to change the various ways costs are passed through: using actual costs of the previous year instead of budgeted costs, or on the periods of time in which expenses may be capitalized. However, many measures were agreed upon with regards to: better regulation of **furnished suites,** more rational manner of setting **washer and dryer rates,** and better monitoring of the **treatment of tenants** under the rehabilitation provisions. All of which will result in a more satisfactory process.

Similarly, recommendations made under the review of the **Landlord and Tenant Act** with regards to such major issues as **abandonments** (removing some of the landlord's risks), **sublets** (bringing them up to current practice) and **mobile homes** (more specific provisions) should result in improvements benefiting all parties.

Certainly of great significance has been the agreement to expand and clarify the **obligations of landlords and tenants** under the Landlord and Tenant Act. Such measures will result in a greater understanding of duties and rights and will reduce disputes. At the same time it will allow for a greater likelihood that violators, whether landlords or tenants, will be dealt with.

It is also well worth mentioning that the Committee has agreed to a fairer penalty provision for landlords who fail to submit **tenancy agreements** on time, to broadening the **nuisance and disturbance** provisions to include row house and apartment complexes, and to an easier method of the gaining of **possession** of rental units occupied by school age children. These proposals, if implemented, will remove long-standing irritants experienced by landlords which have contributed to the souring of relations between landlords and tenants and the Government.

Of major concern to tenants has been the need to improve the quality of housing. A strengthening of the provisions regarding **maintenance and repair** has been addressed in the review of both Acts and recommendations have been made. At the same time, the Professional Property Managers Representative has agreed to proposals prohibitng the rental of uninhabitable premises.

In conclusion, it is worth mentioning **compliance** with the Acts. The Committee, with the exception of the representative of the Manitoba Landlords Association, regards the low percentage of compliance with the Residential Rent Regulation Act (approximately 55%) as inadequate and discussed measures which could be

taken to improve this situation. The Professional Property Managers Association Representative regards the current situation with concern as it results in the Branch's compliance activities being aimed solely at those landlords already complying to some extent (as they are on the rent registry) rather than ensuring that more landlords comply.

The Report, taken as a whole, contains comprehensive proposals aimed at improving landlord-tenant relations and streamlining the administration so as to provide consumers with fair and speedy service. To the extent that landlord-tenant relations are regulated, the report proposes the creation of a system in which: measures to prevent disputes are in place; landlord and tenant rights and duties are clearly delineated in statute; efforts are taken to ensure that landlords and tenants are made aware of their rights and duties; the involvement of the Government in resolving disputes is done in a fair and efficient manner; people who violate the Act, whether landlord or tenant, are dealt with; and rent increases are regulated in an open and fair manner.

The Report, as a whole, lays the foundation for a more satisfactory system of regulation of landlord-tenant relations.

LANDLORD AND TENANT REVIEW COMMITTEE
PART II: RESIDENTIAL RENT REGULATION ACT

1. DEFINITIONS (Section 1)

During the course of the review, the Committee discussed several subjects which the current Act does not address satisfactorily, and which necessitates the addition of definitions to the Act. For a more complete rationale of these recommendations, the appropriate sections of the report should be consulted.

RECOMMENDATION 1.

Section 1, Definitions, should include the following:

(i) **Rent:**

The definition of rent should be changed to take into account the following decision made regarding Discounts/Promotions (see Recommendation 22): if the terms, conditions, and duration of a discount or coupon are not spelled out in the lease, then the base rent (upon which the next increase is calculated) is to be considered as the actual amount paid by a tenant.

(ii) **Apartment Hotels:**

A premises shall be defined as an Apartment Hotel when the following conditions exist:

a) where the landlord offers additional services such as maid service, linen, fully equipped kitchens, etc.; and
b) any other restrictions which would prove that exclusive legal possession of the premises is denied the tenant; and,
c) in each case the landlord would have control of the building including ingress and egress (also see Recommendation 2).

(iii) **Furniture:**

Furniture should remain within the definition of rent (see Recommendation 27).

(iv) **Farms:**

Residential premises shall be defined to include farms where the use of the farm property is strictly residential and the entire parcel of land is under a single tenancy agreement (see Recommendation 4).

2. EXEMPTIONS (Section 2)

2.1 FIVE YEAR EXEMPTION FOR NEW CONSTRUCTION

The Act currently provides for an exemption for five years from the date of the first occupancy permit for newly constructed residential rental buildings. The landlord representatives propose that this either be extended to ten years or that an application process for an extension should be instituted, as in periods of high vacancy rates and high mortgage rates some developers could get locked into a long term loss position thereby creating a disincentive to developers from building rental accommodations.

Both during the Committee's discussion, and in the submissions, the counter argument was raised, that when market conditions exhibited a low vacancy rate and a low mortgage interest rate, five years could be considered as either, a sufficient, or too long a period of exemption.

NO CONSENSUS on the landlords' proposal for a ten year exemption for new construction. The Committee recognizes that the exemption period is part of the investors decision-making considerations and, therefore, has an important effect on construction and the economy but remains unconvinced of the inadequacy of the present five year exemption period.

2.2 APARTMENT HOTELS

The administration brought to the Committee's attention it's desire to have the exemption and definition of Apartment Hotels clarified as a result of several recent attempts at using this provision to avoid the Act [Section 2(3) of the Act exempts residential premises situated in Hotels]. The criteria considered by the Committee relate to the nature of the landlord-tenant relationship, and the characteristics of a hotel. While discussing this issue, the Committee notes that there is no protection against economic eviction for long-term residents of hotels in Manitoba (as has recently occurred in British Columbia) but there is protection under the L. and T. Act where a tenancy exists.

RECOMMENDATION 2.

In order to receive an exemption for an apartment hotel, it must be proved that: the property, or parts thereof, is zoned for use as an Apartment Hotel; that there is a licence to operate as such and that it is so operating; or, that the operation of a property, or parts thereof, as an Apartment Hotel has been in place for such a period of time as to be generally accepted by the residents as an Apartment Hotel operation pursuant to the definition.

2.3 LIMITED DIVIDEND PROGRAM (L.D.) AND RESIDENTIAL REHABILITATION ASSISTANCE PROGRAM (R.R.A.P.)

Recent initiatives by the Federal Government have led to discussions with the Province about bringing these two programs, currently administered by C.M.H.C., under Provincial rent controls. This question was presented to, and considered by, the Committee. The landlord representatives note that L.D.'s are currently priced well below market and would require higher annual percentage increases in rents than C.M.H.C. has proposed to them. The Committee notes that L.D. landlords and C.M.H.C. have a contractual relationship and that while they are sorting it out, C.M.H.C. will continue to control the rents as they have in the past.

The Federal Government has just proposed a new R.R.A.P. The Committee recognizes that, despite some possible mechanical difficulties, it would be advantageous to have all rehabilitations treated consistently: although these may have to be transitioned in as a result of differences in rehabilitation formulas.

RECOMMENDATION 3.

Limited Dividend projects should remain under C.M.H.C.'s control and be exempt from Provincial controls except as noted in (ii) below and old R.R.A.P.s should continue to be exempt but new R.R.A.P.s should come under Provincial controls.

Suggested wording for legal counsel:

(i) That the exemption [Regulation 3(2)(c) R.R.A.P.] remain in the Act but a new section be added stating that the exemption does not apply to any building receiving R.R.A.P. assistance after a certain date.

(ii) When there are buildings going out of C.M.H.C. or Federal Government controls, that these buildings come under Provincial controls.

2.4 ASSISTED RENTAL PROGRAM (A.R.P.)

The landlord representatives brought to the Committee's attention the financial plight of A.R.P. landlords: having to begin to repay the A.R.P. subsidy while revenue is reduced (a result of over-building and rent controls coming in at a time of depressed rents) may force many into bankruptcy. The Committee discussed the possibility of changing the hardship provisions of the Act to take into account the A.R.P. subsidy. If the cost of construction were redefined to include vacancy losses from the first year of operation, then the cost of construction would increase and some landlords would get relief from the hardship provisions of Regulation 18. However, the Committee could not agree on this issue. Some felt that this is, essentially, at this point in time, a

Federal Government problem and it would be preferable to wait and see whether or not the Federal Government extends the period before which the repayment of the A.R.P. begins, forgives the A.R.P. subsidy or forecloses. Others felt that the Committee should address the issue. Landlords prefer CMHC to control ARP's completely (financing and rents) (one jurisdiction as compared to the present situation in which rents are controlled by the Province and financing by CMHC).

NO CONSENSUS on the landlord's proposal that one jurisdiction (Federal or Provincial) should control both rents and financing. Part of the Committee prefers to remain silent on A.R.P.s and let the Federal Government, which created them, deal with this problem. The former Director of the Landlord and Tenant Affairs Branch would like to see the Act changed to provide hardship relief where necessary.

2.5 MOBILE HOME PADS

While mobile home pads are defined, for the purposes of the Act, as residential premises, and therefore subject to the Act, the administration experiences a problem with a grey area as far as the five year exemptions for new construction is concerned. The Act states [(2(2)] that there is a 5 year exemption "after the date of the first occupancy permit ... is issued". However, such permits are not issued for mobile home pads.

The Committee recognizes that mobile home pads provide an important source of rental accommodation in rural areas, that several submissions have been received from interested parties in regard to the L. and T. Act, that they have special problems differentiating them from the rest of the market, and that some Provinces have separate legislation dealing with them.

Landlords consider pads not to be residential premises and therefore, feel they should be exempt. Tenants feel that mobile home pads should continue to be subject to the Act.

NO CONSENSUS on the landlords' proposal to exempt mobile home pads from the Act.

2.6 FARMS

The Act currently excludes "premises occupied for business or farming purposes with living accommodation included and rented under a single tenancy agreement with no separate rent charged therefore" (Section 1, Definitions). The Committee was asked to provide clarification on the status of farms that are rented but not farmed by the renter, as there is currently an incongruity between the R.R.R. Act and the L. and T. Act (the L. and T. Act limits coverage to 3 or less acres while the R.R.R. Act covers the total acreage). The

Committee feels that the purpose of the rental should be the primary factor considered (strictly residential as opposed to commercial) and not the amount of acreage.

RECOMMENDATION 4.

When the use of a farm property is strictly residential, and the entire parcel of land is under a single tenancy agreement, it shall be subject to both Acts, regardless of the amount of acreage. This will provide consistency between the two Acts.

3. FREQUENCY OF RENT INCREASES [Section 16(1)]

Section 16(1) of the Act stipulates that rent can be increased only once in a 12 month period. However, landlord representatives on the Committee raised three issues in which they proposed that rents should be allowed to rise in a special manner.

3.1 IMMEDIATE PASS THROUGH OF UNINSURED EMERGENCY CAPITAL REPAIRS

Landlords propose that they be allowed to apply immediately for an increase in rent to cover the costs of uninsured emergency capital repairs on such items as roofs, boilers, etc. This can be done by passing through costs as leases come up for renewal, thereby not breaking the tenancy agreement. In the ensuing year, the increase would be disallowed as it had already been passed through.

Landlords feel that because the method of calculation of rent increases is based upon a formula which compares the previous year's costs with the current year's actual costs rather than looking at budgeted costs for the next year, that they endure a long waiting period before they begin to recover their costs. Their proposal is a method of accelerating the recovery period for specific costs associated with costly emergency capital repairs.

The Committee discussed the difficulties of administering such a scheme and notes the following problems: confusion created among tenants as a result of possibly receiving more than one rent increase a year; landlords who had only taken a Guideline increase (no financial information required to be submitted) and then applied for an emergency increase, would have to submit full financial statements; provision would have to be included for the Rent Regulation Section to monitor such increases so that they are not passed through a second time at the next regular period for increases; emergencies would have to be clearly defined; and Departmental building inspectors would have to be available to do immediate inspections as these are emergency situations. It also is emphasized that this provision would apply to situations where substantial improvements had been made in the first two years of ownership (see Recommendation 25).

RECOMMENDATION 5.

(i) The reporting period for uninsured major capital items be expanded, so that in addition to Regulation 16, the Officer can consider any expenditure under Regulation 16(c,d), that falls outside the reporting period but prior to the date of the rent increase;

(ii) Departmental building inspectors be available to inspect and report forthwith;

(iii) This also applies to situations where substantial improvements were made in the first two years of ownership (see Recommendation 25).

3.2 TENANT INITIATED IMPROVEMENT

Landlords raised the question of amending the Act so that when they are approached by tenants for an improvement such as a frost free fridge, or a dishwasher, etc., that they be allowed to increase the rent for those tenants. The Committee is generally sympathetic to the proposal as a way of meeting a consumer demand in a certain segment of the market but, as with the previous section, is again confronted with the difficulty of how to apply the Act (which treats rental housing homogeneously) to take into account specific suite by suite situations.

Protection against abuse, it is felt, could easily be dealt with by having the tenant support the landlord's special application. However, concern is expressed by tenants about the administration's ability to ensure adequate monitoring of this proposal so that the actual costs of the improvement or additional service are not passed through, either to other tenants or for a longer period than is allowed.

The Low Income Tenant Representative is opposed to the idea of rent being set on a suite by suite basis for a fixed period of time as low income tenants may be subject to a variety of pressures from landlords to pay for unnecessary things. He feels that any additional services should be dealt with at the next regular application.

NEAR CONSENSUS on the landlords' proposal that on a tenant initiated application for an improvement or something new, an Officer can set a rent for a fixed period of time on a per suite basis. Such application must be supported by the landlord and tenant in writing or by appearance and the Officer's determination may be appealable to a Panel. All in favour except the Low Income Tenant Representative. Middle Income Tenant Representative agrees on condition that the Rent Regulation Section adequately monitors such situations.

3.3 ADDITIONAL RENT FOR ADDITIONAL TENANTS

Many smaller landlords experience problems and increased costs due to wear and tear and service use when additional people move in with their tenants. Therefore, landlords would like to be able to charge additional rent for additional people. While recognizing this as a legitimate concern, many difficulties were raised in regard to being able to adequately monitor such additional rent increases: it is hard

to administer on a suite by suite basis; people move in and out frequently; and it would be difficult to develop criteria to establish a rent level. The mechanism proposed to realize the proposal is that when additional people move in, a new tenancy agreement would be created, and, the previous one would be considered to be ended on a voluntary vacate, thereby allowing for a rent increase.

The Committee notes that part of the problem experienced by small landlords with additional people moving in stems from the difficulties in obtaining speedy evictions under the L. and T. Act.

NO CONSENSUS on the proposal by the representative of the Manitoba Landlord's Association that where additional people move into a suite, in premises containing five units or less, and the landlord and tenant agree on setting a new tenancy agreement, it would be considered as a voluntary vacate and Section 16(2) would apply.

3.4 PROMOTION OF CONSERVATION

The Cost Pass Through system of the Act provides little reason for a landlord to be energy efficient, as reductions in operating costs stemming from expenditures on energy saving equipment, lead to lower rent increases.

RECOMMENDATION 6.

A mechanism should be created to encourage landlords to promote conservation of water, gas, and electricity by allowing a pass through of capital costs that are not reduced or negated by lower operating costs on the Pass Through system, while ensuring that any increases passed on to tenants are not onerous.

4. VOLUNTARY VACATE PROVISIONS [Section 16(2) - (7)]

The Act allows landlords, of buildings with three or less premises, to raise rents upon a voluntary vacate to whatever level they wish, and more frequently than once in a 12 month period, by simply serving notice on the Director. Similarly, landlords of buildings of more than three premises, can do the same but must do so by application. In the latter case, Section 16(6) of the Act stipulates that, in addition to being voluntarily vacated, the rents in the affected suites must have been "below the average of rents payable for other similar or comparable residential premises in the same building and that the reason for the low rent was not solely or primarily the conditions of supply and demand ...".

Presumably the intent of these Sections (which appear to be a method of partial and temporary deregulation) was, in the case of small buildings [(16(2)], a recognition of both their special problems and the difficulty of regulating that segment of the market. The provisions for larger buildings is both more specific, as to reasons for low rents, and is regulatable, in that an application is required. In both cases, the Director has the authority to investigate complaints and enforce compliance [Sections 16(3) & 21]. The initial positions adopted by the landlords and tenants on the Committee were as follows:

Landlords wanted all units to be exempt for voluntary vacates, in order to allow rents to rise to market levels, thereby encouraging new construction.

Tenants proposed the complete deletion of these Sections of the Act and replacing them with special application provisions either, to recover costs due to repair and maintenance associated with vacated tenants, or, to raise low rents to market levels: the determining factor being hardship associated with a landlord's financial position.

4.1 INCREASE ON VOLUNTARY VACATING OF SINGLE FAMILY UNITS

The positions noted above were softened during several discussions which tried to meet two basic concerns: affording protection and regulation to tenants in that segment of the market managed by small landlords, while, at the same time, recognizing the lack of sophistication of small landlords (poor bookkeeping, etc.) and their difficulty in obtaining a return on their investments as a result of a poor economy of scale.

The Committee recommends that the voluntary vacate provisions [Section 16(2)] should continue to exist and should continue to apply to buildings with three or less premises. Secondly, the Committee recommends that the Director continue to receive notice of such increases but there should be a

ceiling placed upon the size of the increase allowed based upon the maximum rent for a comparable suite. The Committee also feels that there should be increased protection afforded tenants in order to ensure that they are neither harrassed into vacating nor are charged more than is allowed by law. To this end, the Committee is recommending: that incoming tenants receive complete information stating the way that the comparability was arrived at; that there are provisions for tenants to have the rent reviewed; and that firm notice provisions are in existence. However, the representative of the Rent Appeals Panelists has reservations about the feasibility of assessing comparability in this part of the market.

RECOMMENDATION 7.

(i) for buildings with three or less premises, the rent may be increased only to the maximum rent for comparable suites on voluntary vacate; and,
(ii) if in the opinion of an Officer, the rent exceeds what reasonably could have been expected in (i), it shall not be considered a voluntary vacate; and,
(iii) the incoming tenant shall receive notice in the manner prescribed in Section 17(4), Notice to New Tenant; and
(iv) until such time as the Director receives notification from the landlord, the voluntary vacate provisions shall not take effect; and,
(v) notification must be made within one month after the new tenant takes up occupancy.

4.2 INCREASE ON VOLUNTARY VACATE OF BUILDINGS WITH MORE THAN THREE PREMISES [Section 16(4)]

In order to meet some of the concerns expressed by tenants, the Committee examined methods of increasing protection for tenants under 16(4). These included: ceilings on rents based upon comparability; proper notification; informing the incoming tenant of previous rents and the basis upon which the new rent was set; increased penalties to prevent harassment of existing tenants to move; and the right of incoming tenants to have the new rent reviewed.

It is felt that the practice of allowing rents to rise on a voluntary vacate to the maximum in the building for a comparable suite would eventually help in dealing with the problem of equalization of rents [Sections 22(2) and 27(2)] and would shift some of the burden from existing tenants to incoming tenants. This proposal is not intended to replace equalization but to remove the need for it in the long term.

The changes being proposed, while in one sense liberalizing the provisions of 16(4) (no reasons required other than voluntary vacate, and only requiring the filing of notice rather than having to apply), will help eventually with the problem of equalization of rents, will provide tenants with

increased protection against abuses, and will place ceilings on the size of rent increases.

The former Director of the Landlord and Tenant Affairs Branch cautions: that it may be impossible to provide tenants with adequate protection against abuses; that the Recommendation may lead to existing tenants receiving less attention in matters of repair and maintenance; that clearly written guidelines on what constitutes comparability would be necessary; and that it could result in increased workloads necessitating additional staff. The representative of the Manitoba Landlords Association prefers comparabilitiy to be based upon neighbourhood rather than buildings.

RECOMMENDATION 8.

(i) for buildings with four or more premises, the rents can be equalized to the maximum rent in the building for comparable suites upon voluntary vacate; and,
(ii) if in the opinion of an Officer, the rent exceeds what reasonably could have been expected in (i), it shall not be considered a voluntary vacate; and,
(iii) the incoming tenant shall receive notice in the manner prescribed in Section 17(4), Notice to New Tenant; and,
(iv) until such time as the Director receives notification from the landlord, the voluntary vacate provisions shall not take effect; and,
(v) notification must be made within one month after the new tenant takes up occupancy.

(Also see Tenant's Right To Object, Recommendation 29.)

4.3 VOLUNTARY VACATES DEFINED

4.3.a Terminations For Cause

The Committee is recommending expanding the definition of voluntary vacate to include terminations for cause (evictions, etc.). It recognizes that landlords suffer various degrees of losses, and, therefore, such cases should be treated as if they were voluntary vacates.

RECOMMENDATION 9.

Termination of a tenancy for cause (where a tenant leaves the premises on an order of eviction or possession or a determination of the Rentalsman under Section 103(9) of the L. and T. Act) is to be considered a voluntary vacate for both Sections 16(2) and 16(4) (see 4.1 and 4.2 above). This does not apply, however, to use and occupancy for one's own or one's relatives' purposes or for rehabilitations not carried through.

4.3.b **Non-Voluntary Vacates An Offence**

At the same time, the Committee proposes several ways of offering better protection to tenants. These include: having landlords provide more information to tenants and the Rent Regulation Section; making provisions for vacates not considered to be voluntary under the Act, to be subject to the compliance provisions (including rent rollbacks); exclusion clauses related to increases exceeding maximum comparable rents; and assurance that costs are not passed through twice.

RECOMMENDATION 10.

Where the Director, on a complaint from a tenant, or on his/her own initiative, has reason to believe that the voluntary vacate was not voluntary or that the reasons were not satisfied, then Section 29 would apply mutatis mutandis [Section 16(2) & (4)].

4.3.c **Costs Passed Through Only Once**

The former Director of the Landlord and Tenant Affairs Branch thinks that when a landlord upgrades a suite that has been voluntarily vacated he will bury the costs in his general repair costs, unless he prepares financial records on a suite specific basis, and that an Officer will be unable to discover such costs unless a complete audit is done.

Other Committee members think that any increase costs associated with voluntarily vacated suites will be offset by increased revenue and, therefore, should not adversely affect rent increases. They note that renovation costs on vacated suites are passed through to all tenants in any case and therefore, this is no different than the current situation.

RECOMMENDATION 11.

Reference be made in the Regulations to a caution on Cost Pass Through so that proportioning associated with voluntary vacated units or with tenant initiated improvements or something new (Section 3.2) are not passed through twice.

4.3.d **Row Houses and Condominiums: Voluntary vacate provisions to apply.**

The Committee debated, at length, whether or not row houses and condominiums should be included under the voluntary vacate provisions: currently row houses are included but condominiums are specifically excluded from inclusion under Section 16(2). The Committee feels that there are no major differences between the two, other than architecture and common element fees. The difficulty with these types of premises relates more to the administration's ability to regulate them: many condominiums and row houses in a building

or structure are owned by one owner under the name of a numbered company and it is difficult to determine ownership. As the voluntary vacate provisions are, to some extent, controlled by the number of premises in a building, this becomes a major stumbling block as far as these types of structures are concerned.

The Committee is proposing the inclusion of condominiums and row houses for voluntary vacate eligibility with several recommendations aimed at increasing the administration's ability to monitor condominiums. It should be noted that tenant representatives approve of the inclusion of condominiums on the condition that they can be adequately monitored.

The representative of the Appeal Panelists on the Committee has strong reservations regarding the inclusion of condominiums. She feels that an Officer would have great difficulty in determining comparability when dealing with complaints or objections. However, the Committee is proposing a mechanism whereby such assessments may be possible.

It should be noted that if this proposal does not become part of the new Act, landlords would like the Act changed so that an Officer, in considering allowable operating expenses, allows the pass through of all common element fees. Currently, the Act does not allow the pass through of budgeted expenses and as a large part of common element fees go into reserve funds (which are budgeted expenses), they are not allowed.

PARTIAL CONSENSUS: the representative of the Rent Appeals panelists dissents with the inclusion of condominiums.

(i) **the applicability of the voluntary vacate provisions, as far as row houses and condominiums are concerned, shall be determined by the number of units under a common ownership within the row house or condominium structure; or where there is a project with more than one structure, in which the original property(ies) or structure(s) was(were) registered with one title, within the project; and,**

(ii) **a caution should be noted that an Officer, in considering such suites, will examine comparability in the context of the whole structure(s); and,**

(iii) **owners of condominiums and row houses shall file Statutory Declarations stating the number of units owned, in whole or in part, in the structure; and,**

(iv) **the Corporation Act should be changed to allow for the easy disclosure of the owners of companies.**

NOTE: Legislative Draftsperson to include appropriate definitions of row houses and condominiums.

5. NOTICES OF, AND APPLICATIONS FOR, RENT INCREASES

The Committee, in examining the Notice provisions of the Act, proposes several changes to correct inconsistencies, to allow landlords more time to send in their applications (even though this could delay the administration's ability to complete it by the effective date of the rent increase), and to ensure that tenants receive full information and advice so as to be able to protect their interests.

The Committee has also proposed that a reference be made on the Notice to New Tenant Form of a Tenant/Landlord Adviser. The purpose of this proposal is to provide tenants with some help and information should they have any concerns or questions. For a fuller discussion of the Tenant/Landlord Adviser see Recommendation 138.

5.1 NOTICE OF RENT INCREASE

RECOMMENDATION 12.

The wording of Section 17(1) of the R.R.R.A. and Section 116(1) of the L. and T. Act should be the same.

5.2 NOTICE OF COMPARABILITY

RECOMMENDATION 13.

Incoming tenants, of suites for which a landlord has served notice under Sections 16(2) and (4), shall, in addition to the other requirements of the Notice to New Tenant Form, receive information as to what suite comparability is based upon [Section 17(4)].

5.3 APPLICATION FOR ABOVE GUIDELINE INCREASE

RECOMMENDATION 14.

The time period by which landlords must serve the Director with the application for an increase in rent above the Guideline, shall be increased from 14 days to one full rental month [Section 21(1)].

6. RESTRICTIONS ON RENT INCREASES

6.1 NO INCREASE WITHOUT NOTICE TO DIRECTOR

In order to ensure greater compliance with the legislation and to provide landlords with a clearer understanding of it's legal requirements, the Committee recommends that there should be no increase in rent until one month after the Notice is filed. This applies to landlords who take a Guideline or less increase where no application is required.

RECOMMENDATION 15.

A rent increase cannot go into effect until the Notice is filed with the Director. When it is filed after the effective date of the increase, then the increase can only go into effect one month after it is filed.

6.2 NO INCREASE WHEN HEALTH & SAFETY STANDARDS ARE VIOLATED

Tenant representatives are opposed to the idea that rent increases be allowed for housing that is in violation of health and safety standards required by law. They feel that many low income tenants pay high rent for poor quality accommodation and in order to protect tenants and to force landlords to make improvements, some measure should be built into the Act.

The landlords position is that it is unrealistic to expect that repairs will be made if the landlord is denied the increased revenue to make them. Although they feel that there may be more rationale in the case of new tenancies than in the case of existing ones (in which a landlord could be forced to make repairs for destructive tenants). They feel that such measures could lead to the boarding up of buildings by landlords.

During the debate on this issue, it was noted that the delay in granting a rent increase would only apply to the violation in the Order for Repair and would not hold up the rent increase for the whole building if the problem was suite specific. Compromise positions explored included: increases granted contingent upon the work being done; increases not to become effective until health and safety problems are solved; and placing the increase portion in trust and drawing on it to make repairs.

NO CONSENSUS on the tenant's proposal that there shall be no increase in rent where premises are in violation of any housing standards, required by law or by-law, relating to health and safety.

7. RENT REGULATION PROCEDURES (Sections 21-24)

While landlords, in general, might prefer a situation in which rent controls do not exist, they have accepted the present reality. Both landlords and tenants are concerned that the process be improved upon, in terms of fairness and equitability. There is a general receptiveness among Committee members: to fine tuning the system so as to provide for a greater degree of consistency in decisions; through improved communication, to increasing landlords' and tenants' understanding of each other's situations; and to increasing the understanding of the basis on which decisions are made. A major consideration in the Committee's deliberations is improving the system so that landlords and tenants, by understanding each other's positions, might be able to informally resolve some of their own differences and that vague and frivolous appeals could be reduced by such a process.

Tenants feel it is important to maintain their present rights and to create new ways in which their concerns can be heard and considered. As the rent regulation process tends to be highly technical, it is viewed as extremely important that a process be created to help tenants understand these technicalities.

7.1 CONSULTATION BEFORE RECOMMENDATION [Section 24(1)]

In order to meet these objectives, the Committee would like the viewing process changed so that tenants' concerns regarding problems with repair and maintenance are heard by the Officer. The Committee would also like Officers to meet with both landlords and tenants, either separately or together, during the viewing process, to increase communication and to help the parties better understand how various expenses, etc. are being considered. Such meetings are to be left up to the Officer's discretion but the Committee feels strongly that improved communication will lead to better understanding, to a reduction in the number of frivolous appeals, and to informal resolution of disputes.

The proposals will entail administrative changes regarding the setting of meeting times and the establishment of systems to ensure that the process does not become too lengthy.

RECOMMENDATION 16.

The Officer may consult with landlords and tenants to obtain additional information and to receive feedback, prior to issuing a recommendation. The representative of the Manitoba Landlords Association would prefer a viewing and hearing before the recommendation is made, with no right of Appeal.

7.2 ON-SITE INSPECTIONS

While recognizing that on-site inspections could be time consuming, the Committee agrees, in the interests of fairness to both landlords and tenants, that on-site inspections be done to help Officers and Panels better determine the actual conditions of the building or suite under objection or appeal.

RECOMMENDATION 17.

When the physical condition of the building or the quality of work is the issue upon which a recommendation hinges, on-site inspections should be done by Officers or caused to be done by Panelists.

7.3 REASONS FOR RECOMMENDATIONS TO BE PROVIDED [Section 22(1)]

The practise of issuing decisions without providing reasons has been one of the most frequently expressed criticisms of the present system. Both parties experience a certain amount of confusion as a result of being unaware of how recommendations are arrived at. For tenants, this has meant an uncertainty as to whether or not to appeal the recommendation and has led to many unnecessary appeals. Landlords, who deal with the Rent Regulation Section more frequently than tenants, see this as contributing to a lack of consistency among Officer's decisions.

The Committee feels that not only should the reasons be provided for viewing at the Rent Regulation Section, but that they also should be included in the Notice of Recommendation Form sent out to both parties. They also would like to see included on that Form, the rent increase applied for, the Government's Guideline, and the percentage of the increase. It is hoped that such measures will lead to better informed and satisfied clients.

RECOMMENDATION 18.

That Rent Regulation Officers should give their Recommendations in brief form including reasons or explanations.

The reasons should be a summation of the working papers and should include: the manner in which expenses, capital costs are allowed/disallowed and reasons therefor; the treatment of changes to the conditions of the building or premises and reasons therefor; the manner in which mortgage interest expenses were considered (where applicable) and reasons therefor; and the way any other matters considered were treated and the reasons therefor.

7.4 CONFIDENTIALITY OF OBJECTING TENANTS NAME [Section 24(1)]

The issue of allowing Officers the discretion of keeping an objecting tenants name from the landlord, when the objection is not suite specific, was considered by the Committee. The Committee weighed the issue of protecting tenants against potential retaliation as opposed to the unfairness of having one's accusers identity remain anonymous. While recognizing that landlords would be protected by the Officer's discretion in revealing the name of the person who signed the objection, and by the recommendations affecting the tenants right to object, some members of the Committee remain unconvinced that such a measure is legal and not discriminatory, and not revealing the name could lead to a court challenge, the effect of which could lead to the overturning of the whole recommendation.

NO CONSENSUS on the proposal to allow the Officer the discretion, if the tenant's objection is of a general nature, to not reveal the identity to the landlord.

7.5 TREATMENT OF OTHER PREMISES IN SAME BUILDING [Sections 21(3) & 27(2)]

A traditional concern expressed by tenants regarding rent controls, has been that when one tenant, in a building with several premises, successfully objects to a rent increase, it is only that rent which is adjusted, regardless of whether or not the same reasons for the objection are applicable to other tenants. The current practise is that Officer's will not expand an objection unless a significant proportion of tenants have made objections.

Recognizing that a reduction in one suite's rent would affect others, most of the Committee feels that proceedings should be expanded if the objection is not suite specific.

NEAR CONSENSUS (All in favour except the representative of the Manitoba Landlord's Association.)

Where an Officer or Panel determines that an objection meets the criteria of Section 20(1), Tenants Right to Object, and where the objection is a building wide problem or affects the tenants generally, it shall be expanded. But where the problem raised in the objection is suite specific, it shall not be expanded.

7.6 APPLICATIONS TO BE PROCESSED BY EFFECTIVE DATE OF RENT INCREASE

A great deal of concern is expressed by both landlords and tenants about recommendations being made by an Officer after the date that the rent is to become effective. Everyone is in agreement that recommendations should be made in the time

frame spelled out in the Act and that not doing so creates problems for all parties involved and leads to increased work for Officers (putting rent money in trust and dealing with rent rebates).

Landlords and tenants feel strongly that applications not only should be done by the effective date, but that their doing so should be made mandatory in the Act. They are not opposed to allowing for a method of extension, however.

The rest of the Committee recognizes that mandatory provisions create numerous problems: forced decisions could lead to poor ones, legal challenges would occur when a decision was delayed, and poor staff morale could develop.

In attempting to reach consensus on this issue, the Committee examined ways of applying pressure on the Government and the civil servants. Specifically, consideration was given to having letters written by either the Minister or the Officer to the landlords and tenants explaining why the application process had not been completed. The tenant representatives feel that while a deadline for processing the application should be fixed in the Act, if it were not met then reasons should be provided to both parties. Such a system would generate the necessary political pressure to lead to either a more efficient system, or additional staff.

RECOMMENDATION 19.

Applications should be processed, and recommendations issued by the effective date of the rent increase and when they are not, the Director may authorize an extension and shall notify both parties and provide the reasons for the delay.

7.7 EQUALIZATION OF RENTS [Section 22(2)]

When an Officer or a Panel makes a recommendation affecting two or more premises in a building, they are allowed, under these provisions, to equalize or adjust all the rents in the building when passing through the rent increase granted. This provision, while not frequently used, does create many problems for the Panels who have to make difficult decisions: whether to open up the case for the whole building if sudden equalization creates too much hardship for some or whether to modify some large increases on suites thereby disrupting equalization and creating new rent anomalies. Tenants whose rents are increased above what was expected or requested and may have to vacate for economic reasons, also experience problems with equalization.

The Committee accepts the fairness of the equalization practise, based upon the principle of like rent for like accommodation (quality and quantity) but is concerned about the potential hardships that could be created by the practise.

The Committee also has included in its proposal on the right of tenants to object to rent increases, what amounts to a tenant application for equalization of rents (see Recommendation 28).

The Committee's view is that the proposals on rents being equalized upon voluntary vacate (see Recommendations 7 and 8) will in the long run reduce the number of cases of rent anomalies. The Committee is of the view that, while the provisions in Section 22(2) (allowing for an Officer to equalize rents) should continue to exist, the legislation should be written in such a manner so that it promotes the use of equalization upon voluntary vacate. To this end the Committee is proposing that equalization must be requested by application, that tenants have the right to object to such applications, and that such applications will not be accepted if they concern rent differences in two or less units.

The representative of the Rent Appeals Panels on the Review Committee accepts the above, in principle, but is concerned that it may not work and could be subject to abuse unless it is closely monitored. She feels that equalization should be phased in to get rid of rent anomalies, but there should be a ceiling on the amount of the increase allowed in one year (1/3 of the allowable increase per unit). Under this scenario, landlords would make a special application for equalization and, in the subsequent year, would have to reapply regardless of having taken a Guideline increase.

During it's deliberations on this issue, other members of the Committee felt the problems of phasing in were too great, and that despite occasional excessive increases made by the equalization process, the longer term preventative solution was preferable (see Recommendation 8).

NEAR CONSENSUS (All in favour except the representative of the Rent Appeals Panelists.)

(i) an Officer shall apply the equalization principle only upon receipt of a special application by a landlord or when a tenant's objection to a rent increase is made on the basis of rent anomalies; and,

(ii) such applications and objections will be considered only if they concern rent anomalies in more than two suites; and,

(iii) that in making equalization adjustments, the Officer shall consider the "quality and quantity" (size and condition and location within the building) for similar units in the building; and,

(iv) tenants may object to a landlord's application for equalization of rents.

7.8 PROCEDURES ON AN OBJECTION TO A GUIDELINE INCREASE

Landlords feel very strongly that the Guideline increase should be a minimum increase and, therefore, tenants should not have the right to object to such increases. They note, that many landlords, in order to save themselves the trouble and expense of filling out financial statements for the Rent Regulation Section, simply take the Guideline increase, even though their costs may warrant a larger increase.

When a tenant objects to a Guideline increase, the landlord is required to provide full financial information to an Officer, despite the fact that, in the landlords' view, many tenant objections tend to be without substance.

The Committee therefore, is recommending that the Officer's procedures in dealing with tenant objections, be changed so that an Officer first can determine if there is substance to the objection before requiring the financial information from the landlord. The Committee hopes that a side effect of this change will be more informal resolution of problems between landlords and tenants (see Section 11, Tenant's Right to Object, for a more detailed discussion on objections).

RECOMMENDATION 20.

Where a tenant objects to a Guideline or less increase, the Officer shall meet with the parties prior to requiring the landlord to provide full financial information.

7.9 GUIDELINE ON ANNUAL INCREASES (Section 18, Regulation 11)

The basis of rent regulation in Manitoba is the Guideline increase, announced annually by the Government in the early Fall, specifying the amount by which landlords can raise rents without making application (only notice is required for taking a Guideline increase). The Guideline increase is arrived at by taking into consideration increased operating costs plus an Economic Adjustment Factor [Regulation 11(2)] to account for inflation.

Landlords are strongly opposed to the fact that the Economic Adjustment Factor (E.A.F.) is actually less than the inflation rate, as this results in a long-term cumulative loss. Tenants feel that the E.A.F. should remain as it is and that the building's appreciation compensates for the fact that the E.A.F. is less than inflation.

Landlords are particularly concerned that the Guideline not be perceived as being part of the political process and, to that end, they would like to see public input into the setting of the Guideline through a public hearing process. The Committee is in agreement that the Guideline should be

arrived at openly, so as to ensure that any perceptions of political tinkering are avoided.

7.9.a Guideline

RECOMMENDATION 21.

The calculations upon which the guideline is based should be arrived at openly with input from both landlords and tenants.

7.9.b Economic Adjustment Factors

NO CONSENSUS on the landlords' proposal that the Economic Adjustment Factor should equal the rate of inflation.

8. MATTERS CONSIDERED BY A RENT REGULATION OFFICER [Section 21(2)]

Section 21(2) can be described as the heart of the Act. It is here that the method of granting above Guideline increases in rent are outlined. This is done by looking at: existing rent, increases in actual expenses that occurred in the year prior to the applied for year, Capital Cost Expenditures, and changes in service provided. Under the previous Rent Stabilization Act and under other rent regulatory programs, increases were/are calculated on the basis of budgeted expenses for the year applied.

8.1 CONSIDERATION OF ACTUAL EXPENSES [21(2),(a),(ii)]

As a result of the current system, in which increases are granted on the basis of actual historical expenses (the previous year's expenses), landlords experience a waiting period before they begin to recover any money expended. Landlords claim this system produces periods in which repairs and maintenance are allowed to accumulate and then are done in one year (so as to ensure that an increase will be allowed on a Pass Through), and results in large fluctuations in rent from one year to another. Landlords would prefer a budgeted system in which they could be certain that costs will be passed through in a manner that is predictable.

The Committee is concerned about reducing fluctuations in rent and repairs and discussed several alternatives: allowing increases based upon a landlord applying for the Guideline increase plus capital expenses; or partial budgeted (where operating expenses are budgeted (with relief for emergency expenditures) and capital expenses are looked at as they occur); and the Pass Through of interest costs associated with repairs and maintenance. No consensus was reached as it was felt that monitoring requirements would become too burdensome and the recommendation on treatment of Emergency Capital Expenditures (Recommendation 5) alleviates the problem to some extent.

Also considered was a proposal to put a ceiling on maximum capital expenditures allowed in one year (8% of rent). Amounts beyond the ceiling could be carried forward to the next year. This could have the result of forcing landlords to make improvements while reducing onerous increases in rent. Landlords felt that if forced to make repairs while having rent increases limited, they would use a cheaper quality of material.

In regards to switching to a budgeted system, tenants feel this could lead to greater abuse, require more supervision and, in general, would have an adverse affect on tenants. The remainder of the Committee (excluding landlords) shares the view that while basing increases on actual expenses

results in serious problems, no better alternative can be found. Similar views were expressed on the proposal regarding reduction in fluctuations in rents by allowing landlords to take a Guideline plus Capital cost increase. In regards to the latter, tenants feel that if such an approach did not work, a worse situation would develop.

It is noted that under the previous Act, Officers and landlords developed adversarial positions as a result of the Officers having to make investigations to see if budgeted expenses were actually spent. Although, as audits and verification of financial statements were not necessary under that system, it was easier to administer.

8.1.a **Budgeted Costs**

NO CONSENSUS on the landlords' proposal to switch to consideration of budgeted costs from actual costs.

8.1.b **Guidelines Plus Capital Costs**

NO CONSENSUS on the landlords' proposal to allow applications for a Guideline plus Capital Expense increase.

8.2 **CONSIDERATION OF DISCOUNTS AND PROMOTIONS [21(2),(a),(i)]**

The administration asked the Committee to give consideration to a loophole in the Act regarding discounts or promotions. There have been instances in which such measures have been used to avoid rent regulation and there has been some uncertainty on whether to base subsequent increases applied for on the actual rent paid or the rent paid plus discount: ie. the rent in the lease is $400/month, the discount given is $50/month, the actual rent paid is therefore $350/month. Should next year's 3% Guideline increase be applied on the $350 or the $400? The Committee feels that for discounts to be allowed as part of the base rent, that all terms, conditions, and duration of the discount should be spelled out.

RECOMMENDATION 22.

When a discount or coupon is offered, and the terms, conditions and duration of the discount are spelled out as part of the lease, then the base rent (upon which the next increase is calculated) is the rent paid plus the amount of the discount. However, if the terms, conditions, and duration are not spelled out in the lease, then the base rent is to be considered as the actual amount paid by the tenant.

8.3 **CONSIDERATION OF CHANGE IN SERVICES [Section 21(2),(a),(iii)]**

Tenants propose a strengthening of this section (regarding change in services to be considered by an Officer). It is

felt that most tenant objections to rent increases result from perceptions of decreased repairs and maintenance. They note that the way the Act is written is fairly vague and could be strengthened. It is proposed by tenants, that the Officer consider changes in the quality and quantity of services provided (amount of service and quality of items replaced). Concerns are expressed by tenants, that they should not have to pay for something not provided; and by landlords, that normal wear and tear and depreciation should be taken into account. Landlords are concerned that if they are penalized for decreasing services, by having the rent increase applied for reduced, they will not have enough money to make the necessary repairs.

RECOMMENDATION 23.

That Section 21(2),(a),(iii) be strengthened by amending it to read, "an Officer shall consider any change material in its effect, to the condition of the building or premises."

8.4 TREATMENT OF EXPENSES (Regulations 13-15)

The Regulations of the Act detail the operating expenses which are considered for Pass Through [Regulation 13(1)] and those which are not (Regulation 15). Tenant representatives propose changes in two areas: normal costs covered by the management fee should not be passed through as a separate cost in the case of advertising for non-building specific employees [13(1),(a)], and the costs of renting appliances and furnishings [13(1),(b)] and non arms-length leased land [13(1),(e)] should not be allowed; and, when landlords claim costs for work done themselves, the Rent Regulation Section should do mandatory inspections [13(1),(n)]. Both of these proposals are designed to prevent abuse.

8.4.a Operating Costs Deletions

NO CONSENSUS on the Low Income Tenant Representative's proposal to delete from operating expenses considered, the costs of advertising for non-building specific employees [13(1),(a)], the costs of renting appliances and furnishings [13(1),(b)] and the costs of leased land (other than for trailer parks [13(1),(e)]) where a non arms-length transaction occurs.

8.4.b Mandatory Inspections

NO CONSENSUS on the tenants' proposal to have mandatory inspections done when landlords do their own work.

8.4.c Management Fees

Landlords propose that management fees be increased for buildings of less than 12 units from 5% of revenue to 10% to

reflect the increased costs associated with smaller buildings. The Middle Income Tenant Representative feels they should be left as they are, while the Low Income Tenant Representative feels that only legitimate demonstrable management fees up to 5% should be considered.

NO CONSENSUS on the landlords' proposal to increase management fees to 10% from 5%.

8.4.d **Operating Expenses Additions**

(i) **Vacancy Loss and Bad Debts**

Landlords propose that the costs associated with actual vacancy loss and bad debts be included as operating expenses for Pass Through. Tenants feel that their inclusion would act as a disincentive for landlords to collect bad debts. They also feel that the Act already provides relief for landlords experiencing financial difficulty by way of the hardship provisions.

NO CONSENSUS on the landlords' proposal to include vacancy loss and bad debts as operating expenses. FLAGGED FOR L.&T. REVIEW.

(ii) **Interest**

Landlords propose that interest on bank loans [15(e)] and mortgage interest [15(f)] be deleted from Regulation 15 and added to Regulation 13 so as to be considered as operating expenses and passed through. While these are legitimate expenses, it was suggested that it is not normal accounting practice to consider mortgage interest an operating expense and that mortgage interest flows into the hardship provisions of the Act.

NO CONSENSUS on the landlords' proposal to consider interest and mortgage interest as operating expenses.

8.4.e **Revenue From Recycling**

As an attempt to promote ecological recycling, the Committee agrees to allow money earned from recycling activities (bottle, can, newspaper recycling, etc.) not to be considered as revenue.

NO CONSENSUS on the Middle Income Tenant Representative's proposal that money earned from recycling activities of bottles, cans, and newspapers, should not, for purposes of calculations under this Act, be considered as revenue. (All in favour except the Coordinator of Appeals and the representative of the Professional Property Managers Association.) (Also see Recommendation 6.)

8.5 MARK-UP COSTS ASSOCIATED WITH NON-ARMS LENGTH TRANSACTIONS

The administration proposed that the Committee consider tightening up what is currently a grey area in the Act: the treatment of costs associated with work done by a landlord's sweat equity or by a non-arms length contractor. The Committee is in agreement with the proposal made to clarify and standardize the treatment of such expenses in order to remove any arbitrariness.

RECOMMENDATION 24.

Where there is evidence of a non-arms length relationship between the landlord and his/her contractor, mark-up costs should not be allowed. However, if a landlord submits evidence that he or his non-arms length contractor has completed work on the property, and such evidence documents time and materials, such costs may be allowed for pass through, pursuant to the legislation, as the lesser of the cost actually charged or the materials/labour ratio of the Policy Manual and in accordance with Section 13(1),(n) of the Regulations.

8.6 CAPITAL EXPENSES (Regulation 16)

Regulation 16 spells out the periods in which capital expenses (capital improvements, major repairs, etc.) are capitalized. At the time the Act was drafted, interest rates were high and therefore the periods were set low (accelerated) so as to act as an incentive to landlords to make improvements.

Tenants propose a restructuring of the capitalization periods because interest rates are much lower now, than when the Act was written. They regard the time periods in their proposal as consistent with the wear and tear or useful life of the items while also setting periods lower for those items they feel warrant special incentives (ie. electrical wiring). Tenants propose that these rates should be reviewed periodically to take into account interest rate fluctuations.

Landlords, on the other hand, reaffirm the importance that low capitalization periods play as an incentive to do work on their buildings. While agreeing that interest rates have dropped and that the original rates were accelerated (to encourage landlords to maintain their properties and to try and prevent "rent control-slum creation" scenarios), they claim that the existing situation is satisfactory. If, however, the periods are changed, they want to have interest on money borrowed to make the repairs and improvements included for Pass Through as part of the operating expenses.

Other matters considered by the Committee in regard to capital expenses were: a ten year capitalization period for satellite dishes; a special one to two year period for

electronic security systems when approved by 75% of tenants; and an 8% of revenue ceiling per year. As far as the latter item is concerned, it is felt that a ceiling on the amount of capital expenses that could be passed through in one year, with provision for excesses to be added the following year, and provisions for emergencies, would help landlords plan improvements over a period of time. This would decrease fluctuations in repair and maintenance. However, landlords do not support this proposal. They feel that if a ceiling were fixed, it would result in landlords using poorer quality materials in order to meet the ceiling.

Finally, as far as attempting to come to grips with the problem of reducing fluctuations in repair and maintenance, the Committee feels that Recommendation 5 on the treatment of emergency capital repairs, would help alleviate that problem.

NO CONSENSUS on the tenants' proposal that Regulation 16 be changed as follows:

(i) Section (a) one third the cost of curtains, drapes, furniture and exterior painting to remain as is;
(ii) Section (b) to allow one fifth the cost of refrigerators, intercom systems, landscaping, washers, dryers, air-conditioning, carpets, insulation, and cablevision wiring;
(iii) Section (c) to allow one seventh the cost of dishwashers, stoves, garburators, electrical wiring, water heaters, and central alarm systems;
(iv) Section (d) to allow one tenth of the costs of heating units, roofing, plumbing, parking lots, swimming pools, siding, and central air.

8.7 HARDSHIP PROVISIONS (Regulations 17, 18, 19)

The Act recognizes the fact that landlords must continue to meet their financial obligations and that they need sufficient revenue to make repairs and renovations. Therefore, the Officer not only looks at increased operating expenses, but also at revenue and mortgage payments, in order to determine if the property has a positive or negative cash flow.

The Committee agrees that such provisions should be in the Act. However, the representative of the Winnipeg Housing Concerns Group feels that they should apply only under extraordinary circumstances and should not be limited to consideration of cash flow.

Landlords made two proposals in regards to changing these provisions: that comparable rents in the market be looked at, and that the amount of financing costs considered be increased from 75% to 90% of the cost of construction or purchase. The former would result in rents being raised in a building if they were below a comparable market level (this

would entail clear criteria on comparability being spelled out) while increasing the mortgage financing would allow landlords whose mortgage costs were 90% of the cost of construction or purchase (low equity), and who were in a cash deficit position, to have the hardship provisions apply.

Tenants disagree with both proposals. They feel that hardship could also be considered from their perspective: ie. hardship for tenants. If comparability were used to determine hardships, there would be little assurance that the building compared to, did not offer better service. As far as mortgage financing is concerned, tenants do not feel that they should have to pay for poor investments (buildings bought for too high a price) or for buildings whose investors only put in minimal equity. This view was shared by the representative of the Rent Appeals Panelists.

8.7.a **Comparability Of Rents**

NO CONSENSUS on the landlords' proposal to have comparability of rents in the market included under hardship consideration.

8.7.b **Mortgage Interest**

NO CONSENSUS on the landlords' proposal to increase the allowable mortgage interest expense from 75% to 90% of the cost of construction or purchase.

8.8 SUBSTANTIAL REPAIRS AND/OR MAJOR IMPROVEMENTS

When the Act was written it had been contemplated that landlords making major improvements and/or substantial repairs would apply for Rehabilitation (Section 33, Reg. 22 & 23) to benefit from a fixed period of exemption from rent regulation. However, in some instances, landlords choose not to apply for Rehabilitation and instead make applications for Pass Through of the capital expenses under Regulation 16. This resulted in several instances of dramatic rent increases and led to a policy clarification of Regulation [18(1),(a),(iii)] by the Minister of Housing in January 1986.

The effect of this announcement was to add the costs of major improvements and/or substantial repairs made within the first two years of purchase to the purchase price if it was determined that such renovations were either, something that the purchaser would likely have considered in determining the purchase price, or were not necessary for the normal operations of the building. This policy was applied retroactively.

The following discussion and recommendation occurred prior to court challenges of the change. The Court ruled that the policy clarification was illegal as the Act did not provide sufficient basis for making the change.

Landlords object to this policy clarification on several grounds: that it is unfair to change the rules retroactively, as some people made investments on the understanding that the costs would be treated in a similar manner as in the past; and, that the changes would encourage landlords to let buildings deteriorate for more than two years.

Tenants are sympathetic to the landlords' position but recognize that the motivation behind the policy clarification was to prevent large rent increases for tenants.

The Committee agrees that applications, which in the opinion of an Officer, meet the criteria for Rehabilitation, should be treated in the same manner as if it were a Rehabilitation. The Committee feels that this proposal provides protection for tenants, while, at the same time, encouraging landlords to renovate.

Landlords would like it clearly noted that they would like this recommendation passed quickly and retroactively to help those people caught in the squeeze created by the Minister's announcement. They also want it noted that the recommendation on the treatment of Emergency Capital Expenditures (Recommendation 5) is applicable to this situation as well.

RECOMMENDATION 25.

Where an Officer, upon receipt of an application for a substantial pass through increase within two years of purchase, is of the opinion, that had an application been made under the Act which met the criteria for Rehabilitation, then the Officer shall send it to the Coordinator of Appeals who, if he concurs with the Officer's assessment, shall refer it to a Panel, notwithstanding that the work may have been completed.

NOTE: This will entail changes to the other rehabilitation provisions, as normally, an application is made prior to work beginning.

NOTE: See Recommendation 5, Emergency Capital Repairs.

8.9 FIRE UPGRADING

The City of Winnipeg recently passed a by-law requiring landlords to meet fire upgrading standards. This by-law is being phased in with all work to be completed by 1990. The Review Committee representatives had several concerns based upon their own interests: the Professional Property Managers Association wants a six year capitalization period so they can recover the large costs in a reasonable period of time without negatively affecting their cash flow; the Manitoba Landlords Association is concerned about difficulties in financing the improvements; tenants are concerned that rent increases resulting from the pass through of costs are not

too onerous; and civil servants are concerned about the possibility that the number of applications for rent increases exceeding the Guideline will increase, thereby exceeding their staff's ability to deal with the applications.

Information supplied to the Committee suggested that it was difficult to assess all the implications of the issue as: the size of rent increases would depend on the number of units; there are many older and newer buildings which already comply to some extent; and banks do not regard the improvements as increasing the value of buildings as all must comply. The Committee was unable to determine the complete effects of the by-law other than that the rate at which rents would increase would depend on the amount of work done (estimated to average anywhere from $50-$1,000) and the number of units in the building; and secondly, that there would likely be an annual operating cost increase for high rise buildings stemming from inspections, equipment testing and control station fees.

The Committee considered several options:

(i) a 1% increase in the Guideline for four years. This would eliminate the need for a large number of above Guideline applications but would be applied to everyone regardless of whether they had to make large expenditures; and,
(ii) a rent surcharge tied to work actually being done (rather than to apply universally) which could subsequently be removed from the base rent; and,
(iii) adjusting the capitalization periods; and,
(iv) loan guarantees to assist landlords with financing.

NO CONSENSUS

The Committee failed to reach consensus on the issue and decided that positions should be noted:

LANDLORDS think that fire upgrading expenses should be passed through in the normal manner at 1/6 amortization periods. They reject the 1% Guideline increase proposal as it could be tinkered with, and secondly, because it would give landlords who have already completed the work, a double benefit. Landlords support the idea of having the Government give them loan guarantees to help with financing (as a last resort to those who can demonstrate an inability to borrow money).

TENANTS feel that a 1% guideline increase is inequitable and would prefer a surcharge for actual costs which would not remain in the base rent. However, they are prepared to accept fire upgrading expenses being passed through at 1/12 and left in the base. Their support for a loan guarantee

program and the pass through is dependent on landlords agreeing to a 1/12 amortization period.

CIVIL SERVANTS are concerned that whatever is done be administratively feasible (they consider the surcharge idea not to be), and result in few increases in the number of applications for above Guideline increases (the longer the amortization period, the fewer the number of applications). They have no problem with a loan guarantee program.

RENT APPEAL PANELIST REPRESENTATIVE feels landlords should apply (using projected figures if administratively feasible) with Departmental inspectors verifying that work is actually done. She feels that the amortization period should be at a 1/10 rate and that the Government could look at increasing shelter allowance subsidies to relieve any hardship that could result. She supports the loan guarantee idea for those landlords who can prove an inability to obtain financing.

NOTE: Landlords could accept 1/8 amortization period as part of a negotiated settlement only if interest was allowed and tenants 1/10.

NOTE: Landlords want the record to show their disapproval of the Government's removal of fire upgrading from the Rehabilitation criteria (Regulations 22 and 23) without consultation, in June 1985.

9. WASHERS & DRYERS

Increases in charges for washers and dryers tend to be small amounts but are a major problem: landlords are required to give what amounts to fourteen months notice of increase if their lease dates are staggered, and, therefore, often resort to decreasing the time on the machines as a method of avoiding increases. This leads to numerous complaints by tenants of reductions in service and becomes a time consuming problem for both Rentalsman and Rent Regulation Officers.

The Committee is recommending a method to simplify this on-going problem which maintains protection of the service to the tenants, while treating the increases in washer and dryer rates separately, but in a similar manner, from the rent increases.

RECOMMENDATION 26.

Washers and dryers should remain within the definition of rent in the Act but should be treated in the following manner, unless it is expressly stated in the tenancy agreement that washers and dryers are not included and the service was not part of the tenancy agreement from Day One:

(i) laundry charges may increase once in a 12 month period (Amendment to Section 16);

(ii) the anniversary date does not have to coincide with the anniversary date of the suite;

(iii) increases in laundry charges are not to be considered two increases in a 12 month period, if different from the anniversary date of the suite;

(iv) all tenants in the building must be provided with a Notice of Increase for Laundry three months prior to the effective date of the increase;

(v) tenants have the right to object to increases;

(vi) the Rent Regulation Section will have the right to review an objection and obtain supporting documentation from the landlord pursuant to Section 21 or 35(1);

(vii) in cases where washers and dryers are supplied by another party (Coinamatic, Wash & Dry, etc.) to the landlord, if the supplier changes the rate to the landlord, the landlords would still have to honour the rate charged to tenants until such time as the landlord applied for and received an increase in the manner proposed unless the "laundromat" facility was a separate service from the date of first occupancy of the building.

NOTE: The Officer's Policy Committee can outline the matters considered in dealing with such applications.

10. FURNISHED SUITES [Section 35(1)]

The Committee, while recognizing that some consumers require the service of furnished suites, is in general agreement that they are, in many cases, subject to abuse. The Low Income Tenant Representative is especially concerned about protecting tenants who, because of language difficulties or difficulties in finding accommodation, are taken advantage of by some landlords. Proposed protection includes: having agreements that are clearly specific as to what furniture is provided, and that specify the condition of the furniture; ensuring that tenants are not overcharged for furniture, given its cost and condition; and not having charges for furniture included in the base rent (upon which suite rental increases are based).

The representative of the Manitoba Landlords Association while concurring with points (i)-(viii) of the proposal, feels that since landlords experience significant damages to furniture (caused by tenants), the rental charge should not be reduced after the payback period.

RECOMMENDATION 27.

(i) the charge associated with, and an itemized list of, all furniture should be identified separately from the base rent in the lease and in all notice forms;

(ii) a condition report for furniture should be mandatory at the start of the lease;

(iii) where furniture is leased, the lease agreement for the furniture should be attached to both the lease and the notice forms;

(iv) where a landlord provides furniture, the monthly cost charged to the tenant shall not exceed the lesser of 1/36 of the purchase price or market value, or, where the furniture is leased, the actual monthly cost of leasing (Section 29 applies mutatis mutandis);

(v) any management fee charged in association with furniture should be part of the overall management fee (5% of the rental charge for furniture plus the rent);

(vi) furniture should remain in the definition of rent in both the R.R.R.A. and the L.T.A.;

(vii) in considering what is reasonable, an Officer shall relate cost to market value;

(viii) notwithstanding the tenancy agreement, a tenant may object to the reasonableness of the amount charged for furniture where there is a non-arms length transaction or where the value of the furniture has been mis-stated.

NOTE: This proposal will require transition provisions.

NOTE: Tenant representatives concur with the above recommendation on the condition that after the furniture is paid for by the landlord, tenants can have the charges for the furniture reduced (based upon the market value).

NEAR CONSENSUS (All in favour except the representative of the Manitoba Landlords Association) on the proposal that tenants may be charged for furniture after the full payback period but only upon the market value of the furniture and have the right to have the charges reassessed by the Rent Regulation Section.

11. TENANTS RIGHT TO OBJECT [Section 20(1)]

11.1 OBJECTION TO GUIDELINE OR LESS THAN GUIDELINE INCREASES

Under the current legislation, landlords who take the annual Guideline increase do not have to apply for it, but must serve notice on the Director. When an increase exceeding the Guideline is applied for, the onus is on the landlord to justify the increase and tenants have the right to object. Under these circumstances, an Officer will conduct a thorough review of financial statements, etc. as outlined in Section 21(2) of the Act.

However, tenants may object to increases, even if they are for the Guideline amount. Despite the fact that there have not been an excessive number of tenant objections, landlords feel that the Guideline should be a minimum, and, therefore, tenants should not have the right to object. Landlords claim that there has been a certain amount of slippage in their bottom line over the years in which controls have been in place, and that Guideline increases, when exceeding cost justification, compensates for this erosion. Secondly, landlords point out that many tenants object for "frivolous" reasons, causing landlords to go through the trouble and expense of having to prepare and submit full financial information. They claim, that in order to avoid the trouble and expense of preparing financial statements, some landlords take the Guideline, even though their costs may warrant above Guideline increases.

Tenants on the other hand, recognize that the Guideline is based upon averages, and that some landlords' costs will be low, and, therefore, tenants should have the right to object to Guideline increases.

The Committee explored legislation in other Provinces, in search of a compromise which would allow for tenant objections to Guideline increases, while, at the same time, reducing the number of frivolous objections. The Committee agreed that the way to do this was to replace the current provision (which states that tenants may object to any increase) with one which lists very broad reasons for objections.

RECOMMENDATION 28.

Tenants may object to Guideline or less than Guideline increases for the following reasons:

(i) variations in the rent being charged by the landlord for similar units within the residential complex; or,

(ii) a deterioration in the standard of maintenance or repair that affects the rental unit or the building; or,

(iii) when the increase, if any, in the landlord's operating expenses does not warrant the increase.

11.2 PROPERTY TAX REASSESSMENT

The Committee also discussed the effects of the forthcoming Property Tax Reassessment upon rent regulation. Tenants propose, that, in the eventuality that taxes decrease (and therefore, operating costs) and landlords do not invest the money saved on repairs and maintenance, that tenants can apply for a reduction in rent, even if no increase was requested by the landlord. Tenants feel that if landlords can request increases above the Guideline, they should be able to request a decrease below it when there is a decrease in operating costs. The remainder of the Committee feels the proposal runs counter to the purpose of the legislation (namely rent controlling and not rent setting) and could lead to frivolous objections and large rent fluctuations. They suggest that increases applied for in subsequent years could be subject to a look back to determine costs saved as a result of reassessment compared with moneys expended on repair and maintenance.

Subsequent to the above discussion the Provincial government allowed the City to establish two classes of residential property: house owner and apartment renter. Landlords and tenants wish to express their combined opposition to any move by the City in this direction and note that if it were implemented, the taxes and, therefore, the rents would not be reduced as they otherwise might have been.

NO CONSENSUS on the tenants' proposal that as a result of possible reductions in operating costs stemming from Property Tax Reassessment, notwithstanding that there is no rent change, a tenant may apply for a variation in rent three months prior to the anniversary date of the suite. However, if an Officer determines that decreases in operating expenses are compensated for by increases in expenditures on repair and maintenance, the rent should not be varied.

11.3 RENT INCREASE FOR VOLUNTARILY VACATED UNITS REVIEWABLE

One of the safeguards provided to tenants, under the voluntary vacate Recommendations (7 and 8), was the right of incoming tenants to object to the rent if they felt that the rent was not based upon something comparable.

RECOMMENDATION 29.

Incoming tenants shall have the right to have the rent equalized under the voluntary vacate provisions reviewed [Section 16(2) and 16(4)], on the basis that the new rent did not meet the comparability requirements of those Sections.

11.4 WASHERS & DRYERS

In addition to the above, the Committee is making recommendations which will require additional applications by landlords for Washer and Dryer rate increases (Recommendation 26), and for Furniture (Recommendation 27). The Committee, therefore, proposes that tenants' right to object should be extended to cover those situations as well.

RECOMMENDATION 30.

Tenants may object to the landlord's application for increases in the charges for Washers and Dryers.

11.5 FURNITURE

RECOMMENDATION 31.

Tenants may object to the reasonableness of the amount charged for furniture where there is a non-arms length transaction or where the value of the furniture has been misstated.

11.6 DECREASE IN SERVICES

While Section 30(1) and (2) currently provide for methods of dealing with reductions in service by the landlord, tenant representatives propose that these situations be dealt with in a more pro-active way, by having the Act clearly state that tenants shall have the right to apply for a rent reduction when services are decreased. Landlords do not feel that this is necessary and that, in keeping with their general position on reductions in rent and reductions in service (they feel that landlords need revenue to make repairs), it would make no sense both to reduce their revenue and to require them to make repairs. The representative of the Rent Appeals Panelists is supportive of the concept proposed by the tenants.

NO CONSENSUS on the tenants' proposal that where there is a decrease in services, tenants can apply to the Director (with the right of appeal to a Panel) for a rent reduction.

12. REHABILITATIONS (Section 23, Regulations 22 & 24)

When the original legislation was drafted, much thought was given to providing landlords and developers with incentives to rehabilitate buildings in order to prevent demolitions. The mechanism created was to allow landlords contemplating substantial renovations (which would increase the life expectancy of the property) to apply to a Panel for an exemption, for up to five years, from rent regulation.

These provisions appear to be working and landlords have few complaints with them.

Tenant representatives are concerned about protecting tenants from dislocation and from the uncertainty created over rent increases under Rehabilitations. They also feel that there should not be open-ended blanket exemptions which result in the removal of properties from regulation.

12.1 REHABILITATION PROCESS

The Committee explored creating a mechanism whereby rehabilitated properties could be treated, in a manner designed to provide tenants with protection under the Act (as far as objections to rent increases are concerned), while at the same time, providing landlords with non-cumbersome incentives to do Rehabilitations.

The mechanism discussed by the Committee was to have landlords, in their application for Rehabilitation, include a pro forma, stating: the nature of the renovation, the renovation costs, the projected rents, the projected operating expenses, and a recovery period. This application would be reviewed by a Panel, in a similar manner as at present, and in addition to fixing a period of recovery, the Panel would calculate in, as an incentive, an additional amount as a return on the investment, specified annually by the Government in the Regulations. The Panel's decision would be in the form of an "order."

The advantages of this scheme are: while at the same time as removing the blanket exemption from regulation, it would allow tenants some knowledge of future rents; would provide landlords with Government sanctioned increases (thereby decreasing or deflecting tenant complaints); and would give further financial incentives to rehabilitate rental housing. Landlords are insistent that, as a result of taking the risks of rehabilitating, their financial position be improved upon beyond what it normally would be.

The proposal envisaged a similar two stage hearing process as presently exists: a hearing on the application before work starts, and a second hearing upon completion of the work. In addition, landlords could apply for variances based upon

increases in cumulative budgeted actual costs. Tenants, on the other hand, could make objections both to the variance application and for normal reasons such as decrease in services, etc.

The Committee also considered a variation on this scheme whereby part of the rent would be fixed (based upon rehabilitation costs and return on investment) and the other part would be set annually according to the Guideline (with landlords' right to apply for an increase based upon actual cumulative operating costs, and tenants' right to object).

However, the Committee could not agree on the issue of the tenants' right to apply for a variance: tenants felt that if the landlords could apply for a variance when costs increased, tenants should be able to apply for one when costs decreased. Landlords were concerned that, should tenants be able to apply for a variance, then the certainty that they need as investors would be jeopardized.

The representative of the Rent Appeal Panelists, the Coordinator of Appeals, and the Deputy Rentalsman were not in favour of the proposal in its entirety. The former feels that it introduces too many unknowns and creates the potential for more landlord-tenant confrontations. The Coordinator of Appeals feels it is unworkable and unless there is a mandatory annual reporting mechanism, tenants would not be adequately protected.

12.1.a **Rehabilitation Process**

NO CONSENSUS on the proposal that the Rehabilitation process be changed as follows:

A landlord applying for Rehabilitation shall submit a pro forma stating all renovation costs and projected annual operating costs and rents for the recovery period applied for. In addition to the above, Panels shall consider a return on investment or dividend which shall be fixed annually in the Regulations. Landlords may apply for a variance at any time during the recovery period and tenants may object to such applications as well as to normal matters such as decrease or withdrawal of services.

12.1.b **Exemptions**

The Committee agreed to change the current provisions on Rehabilitations to allow a Panel, at the second Rehabilitation hearing (after completion of the work), to vary the exemption period in accordance with Section 33(5) (where a landlord, after the first hearing, applies for a variance). Such a provision was contemplated when the original legislation was drafted, but was inadvertently left out.

RECOMMENDATION 32.

Section 33(7) should be amended, so a Panel, in hearing an application for exemption under Section 33(6), shall grant an order for exemption "for such a period as has been fixed under subsection (3) or (5)."

12.1.c **Letters Advising Tenants of Second Hearings**

RECOMMENDATION 33.

Letters to tenants advising them of the second hearing (upon completion of the Rehabilitation) should be carefully and specifically worded so that they understand that while they are entitled to attend and voice any objections they may have, that if the work has been completed in accordance with the Panel's initial order, the exemption, specified at that time, will be granted.

12.2 **TREATMENT OF TENANTS UNDER REHABILITATIONS**

Under the current legislation, the landlord applying for Rehabilitation must specify how tenants are to be treated: left in the building and moved into other suites; left in their suites; or moved out. Tenants feel that if the Act spells out clearer procedures, then tenants would know their rights better. They feel that these rights should be closely monitored by the Rent Appeals Branch.

12.2.a **Treatment of Tenants**

RECOMMENDATION 34.

Guidelines on the treatment of tenants during Rehabilitation should be spelled out and closely monitored by the Rent Appeals Branch. This is not meant however, to preclude the Rentalsman from acting on his own when violations occur that exceed the Panel's orders.

12.2.b **Rentalsman Present at Hearing**

RECOMMENDATION 35.

In order to ensure that tenants are fully protected, a Rentalsman's Officer should be present at the first Rehabilitation hearing.

12.2.c **Notice**

RECOMMENDATION 36.

Tenants can give notice of one rental period once an order for Rehabilitation is issued under Section 33(3).

12.2.d Right of First Refusal

The Committee is proposing, that tenants who have been moved out of their suite as a result of Rehabilitation, should be afforded additional protection to return to their suite, or one similar, by having the Right of First Refusal for it once it has been renovated. The mechanism for accomplishing this would be that the Right would be specified in the Notice, and towards completion of the work, the landlord would forward to the tenant a lease which would have to be signed by a specified date. Failure of the tenant to sign the lease by that date would release the landlord from any obligations to that tenant.

RECOMMENDATION 37.

Current tenants should have the right of first refusal upon completion of Rehabilitation of their own suite or of one that is comparable.

12.2.e Compensation

RECOMMENDATION 38.

When tenants are not treated in the manner spelled out by a Panel, in addition to denying a Rehabilitation application, the Panel should determine the amount of compensation, and order the Landlord to provide it to the tenants.

12.3 OTHER REHABILITATION ISSUES

The Committee discussed changes to the Rehabilitation procedures whereby prospective purchasers would have some of their uncertainties removed prior to making their investments. While recognizing that the current process does give what is, in effect, a pre-ruling, the Committee proposes that prospective purchasers can, with the owner's permission, make Rehabilitation applications. Secondly, the Committee feels that if the criteria upon which the Panel makes determinations were more specific (Regulation 23), prospective purchasers would have a better understanding of whether or not their plans might be approved.

12.3.a Prospective Purchasers

RECOMMENDATION 39.

Landlords can delegate their authority to apply for Rehabilitation to prospective purchasers.

12.3.b **Criteria for Rehabilitations**

RECOMMENDATION 40.

Criteria for Rehabilitation (Regulation 23) should be spelled out more specifically.

12.3.c **Reconstruction**

The Committee also gave consideration to exemptions for buildings which are vacant and which require extensive rehabilitation (buildings which are basically shells). The Committee proposes both the defining of "Reconstructed" buildings, and how they should be treated under the Act. The Committee's proposals are aimed at providing incentives to prevent demolitions.

RECOMMENDATION 41.

Buildings which are vacant, and where the per unit cost of reconstruction (excluding land and superstructure) equals or exceeds 75% of the cost of new construction excluding land and superstructure, should be considered, for purposes of the Act, as new construction. Exemptions for new construction [Section 2(2)] must be approved by a Panel.

12.3.d **Suite by Suite Rehabilitations**

Landlords propose that they be allowed to do suite by suite rehabilitations. While recognizing this to be a more expensive approach to Rehabilitation, they feel it would reduce tenant dislocation and inconvenience. The Branch currently allows suite by suite renovations within the context of a whole building Rehabilitation. It is noted that increased costs associated with suite by suite renovations would be passed on to the tenants, and that tenants who move during a prolonged period of renovation would have their rent raised but would not benefit from the renovations. The administration feels that it would be very difficult to monitor suite by suite Rehabilitations while tenants feel that, in so far as suite by suite renovations prevent massive dislocation, it is fine in principle. However, they are concerned about the ability of the Branch to adequately monitor such renovations.

NO CONSENSUS on the landlords' proposal to allow suite by suite Rehabilitations.

13. COMPLIANCE (Section 29)

Tenant representatives and the representative of the Professional Property Managers Association are dissatisfied with the efforts of the administration in dealing with compliance matters regarding illegal rents. They strongly support compliance with the legislation and feel that compliance matters should be dealt with fairly and quickly. In order to ensure this, they propose the inclusion of a detailed administrative process, with specific time limits for completion, in the Act and the Regulations.

13.1 ADMINISTRATIVE PROCESS FOR DEALING WITH COMPLIANCE

The essence of the proposal is to make the Act more proactive, by allowing tenants to apply to the Rent Regulation Section when they feel their rent has been raised illegally [Section 29(2)]. In order to avoid lengthy delays in dealing with such applications, the Committee proposes that the Act specify that: such applications be dealt with in 45 days; the Officer investigating the complaint must refer it to a Panel within 60 days or if the investigation is incomplete, must ask the Panel for an extension; and the Coordinator of Appeals must send out the Notice of Hearing Form (setting a date for a hearing) within ten days of receipt of the Director's application [Section 29(2)].

In addition, the proposal contains a subsection which requires the Officer to advise the landlord of the complaint and to allow him/her an opportunity to respond or to provide information which could clarify the problem. It is hoped that such a step could result in informal resolutions of disputes.

The Committee recognizes that it is not standard practice to include rigid time constraints in legislation. Therefore, the proposal specifies time frames but also allows for time extensions by a Panel.

The representative of the Appeal Panelists feels strongly that it is not practical to put time limits into legislation. She feels that unexpected events, work loads, delays in getting information from landlords, etc. affect the speed at which Officers work. Rather than specifying time limits, she would prefer recommending that sufficient resources be given to the Department to achieve the desired speed. These views were shared by the Coordinator of Appeals who also feels that specifying time limits in legislation could lead to administrative problems.

Other civil servants on the Committee recognize the impracticality of specifying time limits. They feel that, while it is desirable to achieve the speed required, staff work loads and contingencies do occur (especially in view of the fact

that there are large peaks and troughs of incoming applications for rent increases). However, they feel it is valid for the Committee to serve notice on the Government of the need for speedy resolution and that attaining such speed could necessitate the hiring of additional staff.

NO CONSENSUS on the proposal that tenants can make applications to the Rent Regulation Section when they think their rent has been raised illegally. Such applications must be dealt with within 45 days. (The representatives of the Manitoba Landlords Association and the Rent Appeals Panelists, and the Coordinator of Appeals are opposed to putting time limits in legislation.)

Administrative Process for Dealing with Compliance:

i) The complaint may be made verbally or in writing; when the complaint is made verbally, an Officer interviews the complainant, records the information, receives any documents or evidence in the possession of the complainant, and provides the complainant with written acknowledgement, signed and dated, that the complaint has been received. The Officer may expand an investigation to include more than one premises in the same building.

ii) The Officer advises the landlord of the complaint and provides an opportunity for explanation or information which would clarify the problem.

iii) The Officer requests information from the landlord, and copies of statements received by the landlord pursuant to Section 34(1) and notices to new tenants [Section 17(4)]. [Statements under Section 34(1) should be copied to the Rent Regulation Section and specific time limits should be spelled out for production of information.]

iv) The Officer reviews the information submitted and contacts the complainant to verify actual rent (based upon information contained in documentary evidence) or requests further information from the landlord (list of current tenants and previous tenants, and statement of current rents and rents collected in the 12 months immediately preceding the complaint). This further request for information should be sent out within five working days of the receipt of the information indicated above.

v) The Officer reviews the information received from the landlord. If the information is not forthcoming at the end of a specified period of time, the Officer obtains a court order for the production of the documents.

vi) The Officer attempts to obtain information from current tenants in the block or any other sources, such as Provincial or City Welfare.

vii) **The Officer examines the documents and requests or compels further information from either of the parties.**

viii) **The Officer provides both parties with an opportunity to present new information or to comment on the information which has been presented.**

ix) **The Officer makes a notification of the findings. The landlord has ten days from the date of service of the notification to respond. If after ten days he/she has not responded, the Director must, within a further five days, make application to the Coordinator of Appeals.**

x) **The Director must refer the matter to a Panel within 60 days. The Officer may ask for an extension if the investigation is incomplete. The Panel may ask for explanation and review of the Officer's efforts and fix a further period within which the Officer must report back.**

xi) **The Coordinator of Appeals must send out the Notice of Hearing Form within ten days.**

NOTE: Parts (ii),(x),(xi) should be included in the Act and the remainder of the proposal in the Regulations or the administrative manual.

13.2 INCREASING COMPLIANCE

Besides outlining a detailed compliance process, the Committee discussed other ways of increasing compliance with the legislation. At present, there appears to be a high compliance rate for rental structures with six or more rental premises and a low compliance rate for smaller rental dwellings. The overall compliance rate appears to be around 55%.

Tenants regard compliance as an essential aspect of regulatory legislation, and, they are joined by the Professional Property Managers Association, in urging the Government to do more to force compliance. The Professional Property Managers Association representative feels that his organization complies with the legislation and that other landlords should, as well. He feels the Branch should spend more energy going after flagrant abusers rather than those that comply, but err.

NEAR CONSENSUS (All in favour except the representative of the Manitoba Landlords Association) on the proposal that the Government do more to force compliance by greater use of Government records, prosecutions, etc.

13.3 OTHER MEASURES TO INCREASE COMPLIANCE

The Committee also proposes that various sections of the Act be changed so as to enable the Director to act on compliance matters more quickly and effectively. These proposals include: asking for an order for search and seizure (as a last resort) to deal with a landlord who is hiding information;

and, specifying time limits for responses for information requests (as time limits were specified for dealing with compliance matters, it is necessary to apply these to landlords as well).

13.3.a **Search and Seizure**

NEAR CONSENSUS on the proposal that Section 6 of the Act, Authority for Access, be amended to include, "the searching for and taking of documents, as well as inspecting, taking measurements and pictures of the residential premises where the Director, etc. obtains a court order permitting entry to residential premises." (All in favour except the representative of the Manitoba Landlords Association.)

13.3.b **Time Limit to Respond**

RECOMMENDATION 42.

When the Director, etc., makes a written request for information on rents, the parties must respond within ten days from the date of service or such further time as may be allowed [Section 5(1)].

13.3.c **Penalty for Harrassment to Vacate**

The Committee is proposing significant changes to the voluntary vacate provisions (see Recommendations 7 and 8) which resulted from a series of agreements by landlords and tenants. These included: allowing rents to rise to the maximum rent for a comparable suite by serving of notice to the Director (rather than by application as is presently required for buildings of four or more suites); expanding the definition of voluntary vacate to include terminations for cause; and removing the requirement for reasons for low rents in buildings with four or more suites. In response to these changes, the Committee proposes that penalties be specified for harassment of tenants by landlords to voluntarily vacate.

RECOMMENDATION 43.

Penalties, such as rent rollbacks, rebates, moving expenses, etc., should be specified in the Act for harassment of tenants to vacate. The Coordinator of Appeals feels that moving expenses are more a Landlord and Tenant Act matter.)

13.3.d **No Increase Without Notice to Director**

See Recommendation 15.

14. PROHIBITIONS

Section 35 of the Act lists several prohibitions relating to landlords and tenants. The Committee proposes that these be expanded to include: under 35(1)(c), a prohibition to use rent discounts as subterfuges (see Recommendation 23); under 35(2), prohibition to tenants from impeding, delaying or obstructing Officers, etc. from performing their duties and from disclosing information gained through the process for their own commercial advantage.

14.1 DISCOUNTS AND PROMOTIONS

RECOMMENDATION 44.

Discounts used as subterfuges should be added to the prohibitions relating to landlords [Section 35(1)(c)].

14.2 TENANTS PROHIBITED FROM IMPEDING OFFICERS

RECOMMENDATION 45.

The prohibition relating to landlords impeding, delaying or obstructing Officers, etc. from performing their duties [Section 35(1)(d)] should be applied to tenants as well [Section 35(2)].

14.3 TENANTS PROHIBITED FROM DISCLOSING INFORMATION

RECOMMENDATION 46.

That Section 35(2), Prohibitions Relating to Tenants, should include a clause prohibiting tenants from knowingly disclosing information, gained through the process, for commercial advantage.

15. CONFLICT OF INTEREST

The Committee received complaints from several quarters regarding perceived conflicts of interests by staff. In some cases, tenants complained about Officers being landlords or property managers.

The Act (Section 14) does not disallow Officers from being either landlords or tenants, and, while the Act does not state it, they are subject to both Department of Housing and Government conflict of interest guidelines. The current Departmental practice is for Officers, etc. to disclose their interests to the Deputy Minister (and not to work on files in which they have an interest) and for Rent Appeal Panelists to disclose any interest to the Coordinator of Appeals.

Nothwithstanding the current situation, tenants propose a strengthening of the guidelines along the lines recommended by the Federal Law Reform Commission. They propose that all employees of the Branch, and the neutral Chairperson and Vice-Chairpersons and staff of the proposed Residential Tenancies Board, should be subject to conflict of interest guidelines which go beyond what currently exists (see Part V, Residential Tenancies Board).

These guidelines should specify that the above noted employees should arrange their affairs in such a way so that no conflict exists or appears to exist. Furthermore, tenants would like to see these employees (and their immediate families) barred from engaging in outside business activities which could interfere, appear to interfere, or affect their duties or could result in an advantage to them. Therefore, Officers, etc. should not be landlords and should they own rental property, they should be forced to divest themselves of their holdings (tenants could accept blind trusts, but they prefer divestiture).

Landlords agree that Departmental Guidelines should be referenced in the Act and that employees and Panelists should disclose their interests to their respective Directors, etc. However, they feel that there is a benefit to having employees who possess property management experience and, therefore, there should be no restriction on employment. Landlords feel that if they are barred from being Officer's, etc., so should tenants.

The Civil Servants on the Committee, like the landlords, find the tenants' proposal too stringent and do not support it. They recognize, however, that controlling the appearance of bias by blind trusts does not solve the problem.

The Rent Appeal Panels representative supports the tenants' proposal except she feels that prohibiting immediate family members from engaging in property management activities is too stringent.

15.1 EXPANDED CONFLICT OF INTEREST GUIDELINES

NO CONSENSUS on the tenants' proposal that:

There shall be conflict of interest guidelines beyond those presently provided by the Government and the Department which apply specifically to "neutral" positions within the rent regulation process (all employees of the Branch and the Chairperson and Vice-Chairpersons of the proposed Residential Tenancies Board):

i) Neutral parties shall arrange their business affairs so as to ensure that there is no conflict, or appearance of conflict of interest affecting their objectivity in making decisions.

ii) A person occupying a neutral position, their spouse or immediate family, shall not engage in any outside employment or business that interferes or appears to interfere with his/her duties; in which he/she has an advantage or appears to have an advantage as a result of his/her official position. Nor shall he/she act in a professional capacity that would, or might, affect or appear to affect, the carrying out of his/her duties in a neutral capacity.

iii) Neutral persons should not make decisions in cases involving their own landlord nor attempt to influence such decisions made by others.

iv) Neutral persons shall not carry on the business of landlord (ownership of one or more properties, ownership of equity shares of a corporation carrying more than 5% of the attached voting rights where the corporation owns or manages residential rental property, and any other direct or indirect beneficial ownership through holdings of one's family).

v) In order to meet the conditions spelled out in (iv), divestiture or blind trust arrangements must be made. The preference is for divestiture.

15.2 GOVERNMENT GUIDELINES

RECOMMENDATION 47.

A reference to employees of the Department being subject to Government and Departmental conflict of interest guidelines should be included in the Act.

15.3 GUIDELINES TO INCLUDE RENT APPEALS/RESIDENTIAL TENANCIES BOARD EMPLOYEES

RECOMMENDATION 48.

Department of Housing conflict of interest guidelines should be changed so that employees of the Rent Appeals Branch/Board should submit to the Coordinator of Appeals/Registrar a list

of all rental properties in which they or their immediate families have interests as either landlord, property manager or tenant. Employees of the Landlord and Tenant Affairs Branch should be required to make a similar submission to their Director.

15.4 RENT APPEAL PANELISTS/RESIDENTIAL TENANCIES BOARD MEMBERS

RECOMMENDATION 49.

All Rent Appeal Panelists/Residential Tenancies Board Members should submit to the Coordinator of Appeals/Registrar a list of all the rental properties in which they, or members of their immediate families, have interests (this policy should be included in the Regulations) as either landlord, property manager or tenant.

16. HOUSEKEEPING ITEMS

During the course of the review, the Committee encountered numerous minor items which it proposes changing.

RECOMMENDATION 50.

The following Sections should be amended:

i) Section 2(1)- delete clause (c) as it was a transition provision from the previous legislation.

ii) Section 2(2) - delete reference to Section 41 as it was a transition provision from the previous legislation.

iii) Section 3(1)(2)(3) - names should be changed to correspond to recent Departmental changes; and the words "within the Department" should be deleted.

iv) Section 4(1)(2) - delete the words "within the Department."

v) Section 7(1) - the words "charged with administering the Act" should be added after the words "no person."

vi) Section 7(1) - a clause should be added to clarify the right of the Landlord and Tenant Affairs Branch to have a flow of information between different Sections of the Branch (suggested wording: "Section 7(1) in no way precludes the free flow of information regarding this Act, the L. and T. Act, or the Condominium Act within the Landlord and Tenant Affairs Branch and with other Provincial, Municipal or Federal Government Departments requiring the information in order to carry out their functions.")

vii) Section 7(2) - Release of Orders and Determinations of Appeals Panels and Officers to Potential or Active Purchasers: legal counsel has advised that these are public documents not requiring the consent of the affected parties, under Section 7(2), in order to be released to third parties.

viii) Declaratory Orders - any person may apply to the Court for a declaratory order.

ix) Section 11 - the Coordinator of Appeals should be added to the list of persons having the powers and protections of a commissioner.

x) Section 12(6) - the words "and partake in the application process, the objection proceedings, and the Appeal" should be added to the rights of duly authorized representatives.

xi) Section 16(5) - should the recommendations relating to Section 16(4) not be adopted, then it is proposed that the word "may" should replace the word "shall" so that an Officer "may deal with..."; and that the reference to Section 21 be deleted.

xii) Section 18(1)(2) - subsection (b) should be deleted as it is a carry-over from the previous Act.

xiii) Section 19(1,2,3,4) - these sections should be deleted as they were transition provisions from the previous legislation.

xiv) Section 20(2) - this section should be deleted as it was a transition provision from the previous legislation.

xv) Regulation 13(1)(j) - delete the words "the cost under".

xvi) Schedule D - the form should be clarified so that the words "Rental Income" should be replaced by the words "Rent Collected".

LANDLORD AND TENANT REVIEW COMMITTEE
PART III: LANDLORD AND TENANT ACT

1. SECURITY DEPOSITS

Security deposits are one of the major problems discussed by the Committee. Each of the interest groups identified aspects of the issue which they felt needed improvement: the dispute resolution process was inadequate and too slow; the amount of the security deposit was insufficient (one-half month's rent); and the lack of proper trust arrangements by smaller landlords provided inadequate safeguards against abuse. While the Committee could not agree totally on the answer to every aspect of the issue, it was unanimously in favour of taking a major step towards the prevention of some of the problems: namely, that condition reports should be made mandatory.

1.1 CONDITION REPORTS

1.1.a Mandatory Condition Reports

The Committee recognizes that misunderstandings over what constitutes a valid claim against a security deposit are common (especially with regards to wear and tear) and leads to many unnecessary disputes. Often such disputes are over small sums of money yet they provide a source of antagonism between the two parties which adds to the overall mistrust of one party by the other. Equally frustrating is the fact that often such disputes may take months, and in some cases years, to resolve by the Rentalsman.

The Committee, therefore, proposes that condition reports be made mandatory: no condition report - no security deposit. As caretakers are not allowed by the rules of the Real Estate Brokers Act to collect security deposits, it is suggested that prospective tenants pay a rental deposit which, upon completion of the condition report, becomes the security deposit. This measure will help prevent disputes from arising at the end of tenancies, will reduce the likelihood that tenants will be taken advantage of, will enable disputes to be resolved fairly and quickly, and, ultimately, will improve relations between landlords and tenants.

RECOMMENDATION 51.

Security deposits cannot be collected or demanded without completion, by both parties, of a condition report. (It is suggested that this provision be phased in with all new tenancy agreements entered into from the time legislation is passed.)

1.1.b Form of Condition Report

In keeping with its views that education, communication, and clearly spelled out rights, obligations, and guidelines will reduce misunderstandings and disputes, the Committee proposes

that there be a prescribed condition report form. The Committee notes that tenants may often not feel comfortable in signing a condition report on vacating (admission of liability) and, therefore, proposes that the form contain check off boxes in which tenants can indicate their agreement or disagreement with the report.

Secondly, since there are many disputes over what constitutes normal wear and tear, the Committee proposes that the form contain guidelines on wear and tear which will, hopefully, lead to the resolution of disputes by the parties, themselves, and the reduction in the number of improper claims.

RECOMMENDATION 52.

Condition reports should be on a prescribed form in triplicate containing:

(i) clearly written and attention grabbing instructions and that draws to the tenant's attention the importance and consequences of signing the form or in checking off one's agreement or disagreement;
(ii) boxes for tenants to check off their agreement or disagreement; and
(iii) brief guidelines on what constitutes normal wear and tear and extraordinary cleaning charges.

1.1.c Incoming Condition Reports

The Committee proposes that the condition report be completed immediately upon taking possession of the suite. In order to ensure that there are no misunderstandings or abuses, the tenant should receive a copy of the condition report at that time.

However, the Committee recognizes that there may be situations in which it is not possible to complete the condition report immediately upon occupancy (when the vacating tenant has caused damage that has not been fixed). It, therefore, is proposing that the report must be completed within five working days. As this raises the possibility of damages being done in that time, the Committee proposes that any disputes over completion of the condition report should be handled by the Rentalsman who can go out and complete the condition report. Should this occur, the Rentalsman could hold the security deposit until the end of the tenancy or until the dispute is resolved.

RECOMMENDATION 53.

The incoming tenant should receive a copy of the condition report immediately, but in any event, it must be completed within five working days. If it is not done, or there is a dispute over its completion, the matter should be referred to

the Rentalsman: who may complete the condition report and may call in the security deposit until the dispute is resolved.

1.1.d **Annual Inspections**

In keeping with its focus on prevention of disputes, the Committee proposes that landlords be encouraged to inspect suites annually and update the condition reports. This would provide an opportunity for damages to be repaired on an on-going basis rather than accumulating until the end of the tenancy. Hopefully such a measure will result in both landlords and tenants accepting a greater degree of responsibility for their obligations.

RECOMMENDATION 54.

In order to prevent problems from building up, and to make landlords and tenants more responsible, landlords should be encouraged to inspect the premises once a year to update the condition report. [Such inspections should comply with the 24 hour notice provisions of Section 95(1).]

1.1.e **Condition Report Disputes**

As has been mentioned above (1.1.b), the Committee recognizes that disputes could be reduced by an effective condition report form. It also notes that tenants may feel reluctant to sign such a form as they may feel they would be accepting the landlord's claim. In order to encourage tenants to complete the condition report, the Committee proposed that the form contain clear instructions and check-off boxes for agreement or disagreement. However, should disputes arise, the Committee feels that the present practice of having the Rentalsman attempt mediation continue. As far as adjudication, time periods for mediation, and process are concerned, these matters are discussed in Part V, Residential Tenancies Board/Appeals.

RECOMMENDATION 55.

Disputes over outgoing condition reports should result in the Security Deposit being sent to the Rentalsman and the Rentalsman investigating and mediating the dispute. Failure of a landlord to present and complete a condition report or failure of a tenant to complete an outgoing condition report shall be grounds for losing the right to make a claim against a security deposit. However, either party may call in the Rentalsman to complete a condition report on incoming or outgoing situations.

1.2 **AMOUNT OF SECURITY DEPOSIT** [Section 84(1)]

Currently, the Act limits the amount of the security deposit to one-half a month's rent. Landlords propose that the

amount should be increased to a full month's rent as damages and rent lost when a tenant skips (often the two occur together) far exceeds a half month's rent. Increasing the amount, they feel, would lead to tenants behaving more responsibly and would act as a deterrent to tenants damaging suites. They also note that this would be consistent with provisions in other provinces (Alberta, New Brunswick, Ontario, P.E.I., Yukon). Should the amount be increased, landlords feel that it would benefit other tenants who must pay for repairs for damages under the cost pass through provisions of the Residential Rent Regulation Act.

The remainder of the Committee, with the exception of the Coordinator of Appeals who agrees that the amount of the security deposit should increase, feels that the current provisions of a half month's rent are sufficient. Tenants feel that increasing the amount of the security deposit will not deter tenants from damaging suites, and that landlords can recover losses by court actions or cost pass through in the rent. However, they feel that if a tenant is destructive or breaks the law that the police should act (see Recommendation 94). The representative of the Rent Appeals Panelists agrees with the tenants and also notes that increasing the amount of the security deposit could create a hardship for many low income tenants.

NO CONSENSUS on the landlords' proposal to increase the amount of security deposit to one full month's rent.

1.3 HOLDING OF SECURITY DEPOSITS

1.3.a Security Deposits in Rentalsman's Trust

Equally as strong as landlords feel about the importance of increasing the amount of the security deposit, so tenants feel that security deposits should be held in a trust account with the Rentalsman. Currently the prescribed tenancy agreement form in the Act (form 9) states that landlords should hold security deposits in trust for the tenant.

Tenants feel that the security deposit belongs to the tenants and that they should have a say both as to where it is held and with what degree of security it is held. They note that landlords often use the deposit for working capital and unless there is a proper trust mechanism, tenants (as an unsecured creditor) may end up losing their money.

Tenants feel that placing the security deposit in the Rentalsman's trust would eventually eliminate the perception held by many tenants that they will ever see that money again. If this perception is eliminated, tenant representatives feel that it would improve the care taken of suites by tenants. Finally, tenants think the lengthy time periods currently taken for returning deposits and resolving disputes would be

shortened, as the fourteen day provision for the landlord to send in the deposit to the Rentalsman, when he/she makes a claim, would be unnecessary [Section 86(1)].

During the course of deliberations on this issue, it was recognized that for the most part the problem of lack of proper trust accounts lies with smaller landlords and not larger ones. Many large landlords keep deposits in trust, which (when they are licensed real estate brokers) are audited and monitored by the Security Commission. However, this is not the case for small landlords and the cost of trust accounts for them is prohibitive. To deal with this situation, the Committee discussed two options: one, to have a blanket trust account for small landlords; and secondly, to have all deposits placed in a trust, or some similar vehicle, approved by the Rentalsman. However, as far as the first option is concerned, it was felt it was not viable because whatever was done would have to apply to all landlords, large and small.

The representatives of the Professional Property Managers Association, while agreeing that security deposits should be in trust or some similar trust vehicle (and for small landlords trusts approved by the Rentalsman), do not feel that having them in the Rentalsman's trust would necessarily speed up the dispute resolution process. In addition, they feel that the failure of landlords to turn security deposits over to the Rentalsman is a small problem compared to the workload that having all deposits in trust would entail. They are also concerned about the Rentalsman's ability to monitor N.S.F. cheques or to service rural Manitoba.

The representative of the Manitoba Landlord's Association feels strongly that things should be left as they are.

The remainder of the Committee agrees with the tenants that having deposits in the Rentalsman's trust would speed up the process. In addition, Civil Servants feel that: one quarter of disputed cases would be eliminated, Rentalsman's Officers would be freed up to deal with other matters, and enforcement problems would be reduced.

NO CONSENSUS on the tenants' proposal that all security deposits be placed in the Rentalsman's trust.

1.3.b **Security Deposits in Trust in Manitoba**

In order to prevent problems in securing the return of security deposits, the Committee proposes that they be kept in Manitoba. (Situations have arisen where it has been difficult to resolve disputes with out-of-Province landlords.)

RECOMMENDATION 56.

Security deposits should be held in trust in Manitoba.

1.4 **SECURITY DEPOSIT COVERAGE** [Sections 2(a), and 87(1.2)]

Currently the Act allows claims against security deposits for damages beyond normal wear and tear, and rent arrears.

1.4.a **Extraordinary Cleaning**

While cleaning charges are not a legitimate claim against a security deposit, many landlords make claims for cleaning when a tenant does not clean the suite before vacating. In some cases, tenants do not wish to clean the suite themselves and do not object to having money deducted from the security deposit to pay the caretaker to clean. In other cases, which are disputed, the Rentalsman in investigating the situation, considers cleanliness as a legitimate claim only when it goes beyond the ordinary [tenants are responsible for ordinary cleanliness under Section 98(2)]. The Committee proposes, in keeping with the principle that a suite should be left in the same condition in which it was given (except for normal wear and tear), that the Act expressly state that extraordinary cleaning be included in security deposit coverage. This proposal, it is felt, will reduce misunderstandings and increase responsible behaviour by both landlords and tenants.

RECOMMENDATION 57.

Extraordinary cleaning expenses that are beyond normal wear and tear should be included in security deposit coverage.

1.4.b **Garage Door Opener Fees** (Part of security deposit - see Section 6.3.)

1.4.c **Abatements, etc. Paid to Incoming Tenants** - see 3.1.a and 3.3.a.

1.4.d **Costs Resulting from Decoration Adjudications** - see 3.4.a.

1.5 **SECURITY DEPOSIT DISPUTES** (Section 87)

The issue of security deposit disputes is part of the larger question of dispute resolution in general (see Part V, Residential Tenancies Board, and Part IV, Administration, for a more in-depth discussion).

In general, landlords and tenants are in agreement that the present system is seriously deficient and are proposing changes, outlined in Parts III and IV, to correct them. As far as security deposit disputes are concerned, the Committee is in agreement that mediation and investigation should continue to be the first step.

However, several problems exist with regard to arbitration and adjudication. In general, the Committee is proposing that adjudication be done by a Residential Tenancies Board or, if it is not created, by a separate adjudication section in the Rentalsman's office, with appeals to either a Court or an Appeals Panel.

1.5.a **Rentalsman to Consider Condition Reports**

In order to provide an incentive to both parties to complete an outgoing condition report, the Committee proposes that the Rentalsman consider the condition report when making a determination on a security deposit claim (see Recommendations 53-55).

RECOMMENDATION 58.

The Rentalsman should take into account whether or not the condition report was signed or was presented for signing in making a disposition of a landlord's claim against a security deposit under Section 87(1.4).

1.5.b **Consideration of Wear and Tear** [Section 84(2)]

The Act states that "ordinary wear and tear shall not constitute damage." This wording is necessarily vague but results in a great number of disputes. The Committee feels that many disputes could be prevented if guidelines were written and publicized (on the condition report and by pamphlet or information bulletin). The Committee recognizes that it is hard to assess ordinary wear and tear in isolation from a specific situation but nonetheless feels that the operating principle should be that tenants leave the suite in the same condition they found it in, subject to ordinary wear and tear.

RECOMMENDATION 59.

In order to promote consistency, guidelines on wear and tear should be written which state the objective criteria (length of occupancy, number of occupants, original condition of the suite, etc.) upon which the subjective determination is made.

1.5.c **Claims Exceeding the Security Deposit**

Landlords expressed a concern about the difficulty they experience when they make a claim against a security deposit that exceeds the amount of the deposit. Because the Rentalsman cannot make determinations that exceed the amount of the deposit, their policy has been to request the landlord to reduce the claim or go to Court to have the matter resolved. Secondly, Courts do not like being put in the position of having to adjudicate a matter which has already been adjudicated, in part, by the Rentalsman: eg. landlord claims $200 for arrears and $200 for damages (security deposit is $250).

Under this situation, there is no problem as the claim is easily broken down and the Rentalsman can adjudicate on one part and the landlord can go to Court for the other part. However, if the claim is for $400 for damages alone, it is difficult to make a separation of the claim.

The above example illustrates part of the need for a new dispute resolution mechanism in order to eliminate duplication of jurisdictions and confusion. While recognizing that the Residential Tenancies Board proposal would solve this problem, the Committee is recommending that this matter also be clarified in the Act.

RECOMMENDATION 60.

The landlord's right to go to Court to recover claims against a security deposit exceeding the amount arbitrated by the Rentalsman should be clarified.

1.6 CHANGE OF OWNERSHIP

The representative of the Manitoba Landlord's Association raised the issue of protecting landlords from liability when they buy a rental property but the security deposits' existence is denied by the vendor and, therefore, not transferred. Tenants pointed out that if their proposal to have all security deposits held by the Rentalsman in trust were adopted, this problem would not exist (see Section 1.3.a).

1.6.a Notification by New Landlord (Section 106)

In order to prevent abuses threatening security deposits, the Committee proposes that the Landlord and Tenant Affairs Branch receive a copy of the notification made by new landlords to tenants specifying the amount of security deposit being transferred.

RECOMMENDATION 61.

Notification of change of ownership, Section 106(b), should be amended so that the notification referred to is done on a government supplied form with one copy going to the Landlord and Tenant Affairs Branch.

1.6.b Tenant Response to New Landlord's Notification

In order to protect security deposits and to allow new purchasers time to discover whether or not the security information provided by the vendor is accurate (it was suggested that some of the purchase money not be transferred until tenants respond), the Committee is recommending that tenants be obligated to respond to the new landlord's notification referred to above.

RECOMMENDATION 62.

Tenants, upon receiving notice of change of ownership [Section 106(b)], should report any discrepancies about the amount of security deposit to both the new landlord and the Landlord and Tenant Affairs Branch within twenty-one days (any disputes should be reported to the Branch).

1.6.c Violations of Security Deposit Provisions When Ownership Changes

In addition to the preventative measures outlined above, the Committee is recommending two amendments aimed at strengthening the enforcement side of the Act. Firstly, that Section 106(a) reference the landlord and not the owner and secondly, that Section 117(3)(a) be amended to direct the court to pay the security deposit money to the Rentalsman. The effect of these proposals would be that a former landlord who withheld security deposits and was found guilty of an offence of Section 117(1) (which includes Section 106) for doing so, would in addition be forced to pay the security deposit money to the Rentalsman. The Committee feels that these changes are necessary as they perceive courts as being reluctant to act on these issues.

RECOMMENDATION 63.

Section 117(3) should be amended to direct the court where to pay the security deposit money (the Rentalsman) and to change the word "may" to "shall" ("the court shall in addition in imposing a fine ..."). Secondly, the word landlord should be substituted for the word owner in Section 106.

1.7 INTEREST ON SECURITY DEPOSITS

Despite the fact that some submissions suggested that the method of calculating interest on security deposits be simplified, the Committee did not regard this as a problem.

2. TENANCY AGREEMENTS

2.1 FAILURE TO SUBMIT NEW TENANCY AGREEMENT [Section 103(8)(b)]

The provisions of the Act currently penalize landlords who fail to submit a new tenancy agreement to a tenant in occupancy under a tenancy agreement, with a six month extension of the agreement on the same terms and conditions: i.e. no rent increase.

The tenant representatives agree with the landlords that these provisions should be changed.

The Committee, therefore, proposes that the penalty should be a three month extension from whatever date the new tenancy agreement is submitted. However, in order not to upset buildings with uniform renewal dates, the Committee proposes that the anniversary dates on the rental units should remain the same. The effect of this recommendation is that the landlord would only lose a rent increase for the period of time in which he/she failed to submit a new tenancy agreement.

RECOMMENDATION 64.

Where a landlord fails to submit a new tenancy agreement [Sections 103(7)(8)], the penalty should be changed from a six month renewal of the tenancy agreement to a renewal (on the same terms and conditions) from the expiry date of the tenancy agreement until such time as three months have passed from when the new tenancy agreement has been submitted.

2.2 TERMS AND CONDITIONS [Section 118(2.1)]

The Committee proposes that since non-compliance with the terms of a tenancy agreement is grounds for termination, that any rules that landlords include in tenancy agreements should be reasonable and also consistent with the Residential Rent Regulation Act. While reasonableness is referenced in the prescribed Tenancy Agreement form, it is not mentioned in the Act itself.

RECOMMENDATION 65.

Any provision not specified in the prescribed tenancy agreement form, in addition to meeting the requirements of Section 118(2.1), should be consistent with the Residential Rent Regulation Act and also should be reasonable.

2.3 MOVING TIMES

The Committee spent a great deal of time discussing the problems created on "moving days" with overholding tenants,

backlogs with the elevators, etc. Currently, tenancy agreements end at midnight and begin at 12:01 a.m. However, it is unreasonable, if not impossible, and undesirable to expect people to move at that time. The Committee examined the possibility of changing the provisions so that moving out would occur before noon on the last day of the tenancy and moving in, after noon. However, it was felt that changing something which has become accepted standard practice would create too much confusion.

The Committee, while recognizing that there is no easy solution to this problem, proposes that the Rentalsman be authorized to give official sanction to a landlord's rules, specifying moving times, in a tenancy agreement. This would allow landlords a greater degree of control to deal with moving and result in fewer problems occurring (especially at peak moving times).

RECOMMENDATION 66.

Tenancy agreements may contain specified moving times (similar to hotels) which must be approved by the Rentalsman. (Middle income tenant suggests that these be standardized).

2.4 NUISANCE AND DISTURBANCE

The Committee discussed a loophole in the Act with regard to nuisance and disturbance: a situation occurred in which a landlord, who rented a single detached house, tried to evict people who caused frequent disturbances. Under the Act, a landlord can terminate a tenancy for nuisance and disturbance only when other tenants are disturbed. In this case, only non-tenant neighbours were disturbed.

The Committee proposes that the prescribed form of the tenancy agreement contain a prohibition against disturbing people in adjacent premises, notwithstanding that they may not be occupied by tenants of the same landlord. This would provide the landlord with an additional grounds for termination. The Coordinator of Appeals disagrees with the legality of such a provision.

NEAR CONSENSUS on the proposal to change the prescribed form of a tenancy agreement to include, as an additional grounds for termination, a prohibition on disturbing people in adjacent premises, notwithstanding that they may be occupied by homeowners or tenants of a different landlord.

2.5 HOUSEKEEPING CHANGE TO SECTION 103(7)

RECOMMENDATION 67.

Section 103(7), Execution of Tenancy Agreement, should reference Section 17(6) of the Rent Regulation Act.

3. OBLIGATIONS OF LANDLORDS [Section 98(1)]

The following two sections outline in detail obligations of landlords and tenants. Many of the proposed changes to the current provisions of the Act are the result of an agreement between landlords and tenants: landlords agree to stronger provisions regarding compliance with repair and maintenance and habitable living conditions and tenants agree to support a comprehensive and speedier mechanism for possessions and evictions (see Part V).

Tenants note that the current provisions outlining landlords' responsibilities are deficient in several ways. Firstly, the wording is ambiguous and should be changed to clear, consistent and enforceable wording and stated in point form like tenants' responsibilities are in Section 98(2). Secondly, there is an overlap of jurisdiction with the municipalities which results in the Rentalsman not accepting City work orders or enforcing City Bylaws. This impediment to speedy action by the Rentalsman should be changed. Finally, enforcement is seriously curtailed as the Act does not include contraventions by landlords of their responsibilities in Section 98(1) as offences; and the Rentalsman can only effect repairs by redirecting rent from one suite (often generating insufficient money to effect repairs).

Landlords on the other hand have proposed some amendments aimed at increasing tenants' responsibilities and at correcting gaps in current obligations. While these obligations are viewed with some importance, landlords are quite concerned with the administration of the Act and the manner and speed with which violations are dealt with.

Both landlords and tenants are in agreement that violators, whether landlords or tenants, should be dealt with quickly and equitably. In some cases, the Committee has spelled out recourses for failing to meet obligations, and in others, not. However, the absence of recourses should not be interpreted as a desire by the Committee that they should not exist.

3.1 TO MAKE PREMISES AVAILABLE

The Committee proposes that landlords be responsible for ensuring that the premises are made available. However, they recognize that landlords should not be penalized when the reason the premises are not made available is a result of an outgoing tenant overholding.

RECOMMENDATION 68.

Landlords are obligated to make the premises available for occupation by the incoming tenant at the beginning of the tenancy.

3.1.a Failure to Make Premises Available

RECOMMENDATION 69.

Failure of landlord to make the premises available should result in:

(i) termination at the tenant's choice;
(ii) abatement of rent for the length of time the tenant is not in occupancy (on a prorated basis of the legal monthly rent); when the outgoing tenant is responsible for the unit not being available, then the amount of the abatement and compensation shall be recoverable from, and added to any charges levied against, the outgoing tenant; (see Recommendation 102);
(iii) NO CONSENSUS on the tenants' proposal that compensation be included as a recourse.

3.2 PREMISES UNFIT FOR HABITATION PROHIBITED FROM BEING RENTED

Tenants feel very strongly that premises that are uninhabitable should be prohibited from being rented. Their experience has been that the process for forcing landlords to make repairs is totally inadequate: dual jurisdiction of the City and the Rentalsman, make the process lengthy; redirects from only one suite results in insufficient money to make repairs; etc. Tenants feel that aside from other changes being proposed, a prohibition on renting suites that are uninhabitable is a necessary preventative measure.

Landlords agree that the Act should discourage the rental of slums but should encourage the rehabilitation of premises that are "salvageable". However, landlords want some assurance that the criteria on habitability are clearly for non-cosmetic items. **Landlords' agreement to this prohibition is based upon better enforcement mechanisms being created so that tenants who damage suites are dealt with more severely than at present: criminal offences for malicious damages, ability to recover for damages, easier evictions, etc.**

NEAR CONSENSUS on the proposal that premises that are in violation of health and safety standards required by law, to the extent that the non-compliance is determined to make the premises unfit for habitation, are prohibited from being rented until such time as it is determined that they are fit for habitation. (All in favour except the representative of the Manitoba Landlords Association). (Also see Recommendation 72).

3.2.a Criteria on Habitability

The Committee examined the criteria on habitability in the City of Winnipeg Bylaw 763-74 and the Public Health Act - Division XII.

These criteria are suggested for determining habitability at the time of occupancy. They relate specifically to a landlord's obligation to provide a habitable suite. They would be used by an officer, the Rentalsman, or a housing tribunal to determine if a landlord has breached this obligation. These criteria are not intended to replace the landlord's or tenant's obligation to maintain the suite in a habitable state. They are intended to prevent the occupancy of rental premises not fit for habitation.

These criteria are to be considered as minimum standards for habitability. Wherever they are stated (legislation, regulation or policy) they are to be accompanied by a note to the effect that a suite may also be deemed uninhabitable, by any authorized health or building inspector acting in his/her official capacity, for any other violation or violations of health or safety law.

RECOMMENDATION 70.

The Committee proposes that criteria be included in the Regulations or in policy guidelines to help determine habitability at the time of occupancy. The following sections of the Public Health Act and Winnipeg By-Law 763-74 are examples of such criteria:

Maintenance of Yards

A yard shall be kept free and clean from objects and conditions, including holes and excavations, that are health, fire or accident hazards.

Exterior Steps

All exterior steps shall be kept in good repair so as to afford safe passage under normal use and weather conditions.

Pest Prevention

Every dwelling shall be maintained free of rodents, vermin and insects at all times and methods used for exterminating rodents, vermin or insects shall conform with generally accepted practice in the City of Winnipeg.

Walls and Ceilings

Every wall and ceiling in a dwelling shall be maintained in good condition and free from holes, large cracks, loose plaster and accident hazards.

Floors

Every floor shall be free of loose, warped, protruding and

rotting floor boards, shall be free of wide dirt-harbouring holes or cracks and other defects that are fire or accident hazards, and shall be maintained in a clean and sanitary condition.

Plumbing

(a) No owner, operator or occupant shall cause any plumbing facility required by this Bylaw to be removed, nor allow the water supply to any plumbing fixture to be shut off, for nonpayment of water bill or otherwise, in any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs, replacements or alterations are in process of being made.

(b) Seats shall be provided for all water closets and such seats shall be kept in good repair. Any seat on a water closet other than one in a dwelling unit shall be the open front type.

(c) Bathrooms and toilet rooms shall be ventilated with a window which can be opened and held in an open position by window hardware, or by local or mechanical ventilation.

Heating

Every dwelling shall be provided with a heating system properly installed and maintained in a safe and good working condition providing a room temperature of not less than 70 degrees F. at all times except that between the hours of 11:00 p.m. and 7:00 a.m. of the day following, when the room temperature may be reduced to not less than 65 degrees F. and except during the period of maintenance or for the purposes of inspection at the request of the Province of Manitoba, Department of Labour.

Insanitary and Hazardous Conditions

(a) No person shall commit any nuisance nor permit or maintain any insanitary condition in any premises within his control or management, nor shall he permit the existence of any condition, matter or thing which in the opinion of the Inspector provides or may provide food or harborage for rodents, vermin and insects.

(b) No dwelling, or any part thereof, or the lot upon which it is situated shall be used as a place of storage for keeping or handling of any article dangerous or detrimental to life or health, nor of any combustible article, except under such conditions as

may be prescribed by the Fire Chief under authority of a written permit issued by him.

Mechanical

All furnaces, steam and water boilers, and all piping and equipment pertaining thereto, including smoke pipes and chimneys, that are a permanent fixed installation in any building used for human habitation shall be maintained by the owner of the premises in good repair and proper working order.

Gas stoves, water heaters, and other gas appliances shall be provided with suitable pipes or flues or other effective means for the removal of the products of combustion; and all such appliances shall be kept by the owner of the appliances in proper state of repair and in proper working order.

Locks

No owner of a dwelling shall let it or a dwelling unit therein to any person unless doors to the entrances of rooms occupied by roomers and doors to the entrances of dwelling units are capable of being locked inside and outside the rooms or dwelling units.

Electrical Services

(a) Every dwelling shall be connected to an electrical supply system and shall be wired for electricity.

(b) An adequate supply of electric power shall be available at all times in all parts of every occupied dwelling, and the capacity of the connection to the dwelling and the system of circuits distributing the electrical supply within the dwelling shall be adequate for the use and intended use in the dwelling and shall be in compliance with the Electrical Bylaw of the City.

(c) The electrical wiring, circuits, fuses, circuit-breakers and electrical equipment shall be maintained at all times in compliance with the provisions of The Winnipeg Electrical Bylaw.

However, notwithstanding the generality of the foregoing, other criteria may be considered.

3.3 TO DELIVER THE PREMISES IN PROPER STATE OF REPAIR

Certainly one of the primary concerns of the Committee is the rental of substandard suites. While not objecting to the inclusion of this obligation, landlords want some assurance

that the criteria on habitability relating to health and safety (and not cosmetics) are clearly spelled out: landlords do not want to be forced to do cosmetic renovations. Secondly, landlords propose, and tenants agree, that when the uninhabitable conditions are caused by an outgoing tenant, that the landlord be allowed to rectify the situation before being penalized.

RECOMMENDATION 71.

Landlords are obligated to deliver the premises in a state of repair that complies with health and safety standards required by law, to the extent that such standards apply to the habitability of the premises, notwithstanding that a tenant knew of a breach by the landlord at the time of entering into a tenancy agreement.

3.3.a Failure to Deliver the Premises in Proper State of Repair

The Committee feels that any penalty or recourse should be tempered when an outgoing tenant damages a suite by allowing landlords a short period of time to rectify the situation. Secondly, consistent with the attitude that those responsible for violations should be held responsible, the Committee proposes that any rent abatements given the incoming tenant should be charged against the outgoing tenant.

RECOMMENDATION 72.

The recourse for a failure by the landlord to deliver the premises in a proper state of repair should be:

(i) termination at the tenant's choice (but must be made within five days from the start of the tenancy);

(ii) abatement of rent - the incoming tenant may apply to the Rentalsman for an abatement of rent for the time in which the premises are uninhabitable (on a prorated basis of the legal monthly rent). The amount of this abatement is to be added to any charges levied against the outgoing tenant when he/she is responsible for the uninhabitable conditions.

(iii) the landlord shall make the premises habitable forthwith, or in any event, not later than five days from the commencement of the tenancy;

(iv) the landlord should not be guilty of an offence where the outgoing tenant is responsible for the conditions being uninhabitable and the landlord has substantially completed the repairs to the extent they are fit for the purposes intended within five days.

3.4 TO MAINTAIN PREMISES IN A REASONABLE STATE OF DECORATION

One issue which causes numerous disputes between landlords and tenants is that of cosmetic decorations: painting, carpets, etc. Currently the Act remains silent on this issue but in keeping with its preventative focus, the Committee proposes that the Act address the issue in order to reduce misunderstandings and disputes. However, it should be kept in mind that the intent here is to reference cosmetic items and not repairs, as landlords are firmly opposed to forced upgrading. The Committee recognizes that what might constitute a reasonable state of decoration is extremely subjective and proposes that common sense be used in determining reasonableness (while specifying general criteria to guide the arbitrator, i.e. standard of the condition would mean one would not expect a plain glass window to be replaced by a leaded one or expensive carpet to be replaced by vinyl).

The proposal takes into account the current practice in which costs are split between the landlord and tenant when it is felt that the proposed cosmetic change is unnecessary. Tenants also express concern about situations in which landlords agree to make a decorative improvement for an incoming tenant or as part of an agreement for renewing a lease, and then fail to do so.

RECOMMENDATION 73.

Landlords are obligated to maintain the premises in a reasonable state of decoration. In determining what is reasonable, the following are to be considered: length of tenure, current states of decoration, normal wear and tear, period since item was last attended to, care and maintenance of the premises by the tenant, and the standard of the condition of the property that existed prior to the alleged cosmetic deterioration.

Disputes should be handled in a manner consistent with other landlord-tenant disputes: investigation, mediation, adjudication (Rentalsman/Court).

3.4.a Failure to Maintain the Premises in a Reasonable State of Decoration

The Committee does not feel that this should be an offence under the Act but that an adjudicator should be able to make determinations and order the redirection of rents in order to enforce decisions. Secondly, the Committee proposes that the adjudicator be given the authority to have either party or both pay for the redecoration (also taking into account either party's neglect). In the event that the tenant may have to pay part or all of the costs, he/she should have the right to withdraw his/her request as long as work has not begun and in situations in which he/she has not been responsible, in whole or in part, for the decoration being necessary.

RECOMMENDATION 74.

Failure to maintain the premises in a reasonable state of decoration should not be an offence under the Act but the determinations may include orders for costs of decoration to be paid by either party or to be split in an equitable manner. In order to enforce determinations, redirection of rents can be ordered. Tenants may withdraw their request and nullify the proceedings before contracts are awarded or work has commenced, only when the adjudicator has determined that he/she was not responsible for decoration being necessary. The failure of a tenant to pay his/her adjudicated share after contracts have been awarded or work has begun shall be grounds for termination (at the landlord's option) and costs shall be recoverable from the security deposit.

3.5 TO MAINTAIN PREMISES IN A PROPER STATE OF REPAIR

Correcting the weaknesses of the repair provisions of the Act is a high priority item for tenants. They note that three aspects have led to landlords evading their responsibilities. First, both the City and the Rentalsman have jurisdiction which results in lengthy delays in resolving repair problems. Part of the solution to this, they feel, would be to require Rentalsman's Officers to accept City Inspector's Orders rather than doing their own inspections. This problem would be resolved by the proposed Residential Tenancies Board as well.

The second problem, they note, is that failure of landlords to meet their obligations [Section 98(1)] is not an offence under the Act [Section 117(1)]. This, along with the provision to redirect rent from only the affected suite, reduces the chances for enforcement. In order to correct these deficiencies, tenants propose that landlords' responsibilities be more clearly written and that redirection of rent be allowed from more than one suite (the amount of rent from one suite is often insufficient to cause the necessary repairs to be done).

Landlords agree with the tenants' proposal. However, as they strongly object to the Rentalsman being both judge and jury on repair issues, their agreement is contingent upon the housing court being created.

In addition, the Committee did not have sufficient time to deal with administrative guidelines to be used for repairs, but wants the need for them noted. Nor did it deal with the issue of compensation for loss of services raised by the Middle Income Tenant Representative. However, the Committee noted that these matters should be dealt with separately from repairs and, in any event, the Rent Regulation Act has provisions for dealing with reduction in services.

RECOMMENDATION 75.

Landlords are obligated to maintain the premises in a state of repair that complies with health, safety, and housing standards required by law.

3.5.a **Failure to Maintain the Premises**

The Committee did not fully address the question of penalties (other than through changes proposed and implied by the housing court and administrative proposals). However, tenants indicated that penalties should be severe: terminations, fines, criminal offences, compensation and abatements. Landlords feel that they are unable to give full support to this unless the current manner with which repairs are dealt with is changed.

3.5.a (i) **Redirection of Rent** (Section 119)

However, as far as redirects to effect repairs are concerned, it is proposed that redirects from more than one suite should be done within certain criteria so that enough revenue can be collected to effect the repairs (currently redirect can come from only the affected suite).

NEAR CONSENSUS on the proposal (all agreed except the representative of the Manitoba Landlords Association) that redirects to effect repairs can come from more than one suite. However, there should be no redirects until the end of the adjudicative process (after the appeal period) and criteria for redirects should be established so that the cash flow of a building is not reduced to such an extent that mortgage or utility or tax commitments cannot be made.

3.5.a (ii) **Terminations**

RECOMMENDATION 76.

A contravention of a health and safety standard required by law, shall be grounds for termination of the tenancy by the non-offending party, if the contravention (as specified in a Health Order) is not rectified in the time period specified in the Order.

3.6 **TO MAINTAIN SERVICES** [Section 98(7)]

While the responsibility for maintaining services specified in the tenancy agreement is currently referenced in the Act (by describing the procedure to be followed when the landlord fails to fulfill his/her obligation [Section 98(7)], the Committee feels that it would increase everyone's understanding if all obligations were clearly stated.

RECOMMENDATION 77.

Landlords are obligated to keep in a good, safe and functional state of repair all services for the residential property which are the responsibility of the landlord under the tenancy agreement.

3.7 **TO ENSURE PEACEFUL USE**

The Committee proposes that the Act clearly state the landlords' obligation to take action to ensure that tenants have peaceful use of the premises, i.e. when a tenant complains to the landlord, or his/her agent, that another tenant is causing noise, the landlord is obligated to take action to try and stop the noise from continuing. Landlords want it made clear, however, that once they have taken action, they should be relieved of the obligation.

RECOMMENDATION 78.

Landlords are obligated to ensure that tenants have peaceful use of the residential premises (responsibility fulfilled once matter has been turned over to the Rentalsman or the Residential Tenancies Board).

3.8 **TO PROVIDE INFORMATION** [Section 105]

The Committee feels that better communication between landlords and tenants will reduce the number of disputes and will result in the informal resolution of many disputes by the parties themselves.

3.8.a **To Provide Tenants with Government Brochures**

The Committee recommends that the Government supply a brochure, outlining landlord and tenant rights and obligations, which the landlord is obligated to give to the tenant. The Committee feels that the present brochure is inadequate and that a new one be written which contains, in addition to rights and duties, other useful information written in simple language.

RECOMMENDATION 79.

Landlords are obligated to provide tenants, at the time of entering into a tenancy agreement, a Government supplied brochure, written in plain language, outlining rights and obligations, etc.

3.8.b **To Provide Tenants with Name and Address**

The Committee recommends that Section 105(1) be amended so that in addition to supplying tenants with the landlord's name and address, landlords be obligated to supply the name

and phone number of the landlord's agent who is responsible for repairs and rent collection. This will reduce any confusion experienced by tenants when the person responsible for making repairs, etc. is different than the landlord.

RECOMMENDATION 80.

Section 105(1), Providing Name and Address to Tenant, should be amended so that tenants are provided with the name, address, and phone number of the landlord's agent(s) who is(are) responsible for making repairs and collecting rent.

3.8.c To Provide Tenants with Information on Insurance

The Committee feels that tenants would be in a more secure position with regards to various accidential losses, if they had tenant insurance. In order to facilitate this, the Committee proposes that landlords give tenants a brochure (supplied by the Government) on tenant insurance.

RECOMMENDATION 81.

Landlords are obligated to give tenants a Government supplied brochure on tenant insurance (not necessarily an M.P.I.C. brochure).

3.9 TO PROVIDE RECEIPT

In order to forestall disputes from arising over wehther or not rent is paid, the Committee proposes that when rent is paid in cash, a receipt be provided (not necessary for rent paid by cheque as the cancelled cheque acts as proof of payment).

RECOMMENDATION 82.

Landlords are obligated to provide tenants with a receipt for rent paid in cash.

3.9.a Failure to Issue a Receipt

RECOMMENDATION 83.

Failure by the landlord to issue a receipt for rent paid in cash, should be an offence under the Act.

3.10 CHANGES TO EXISTING OBLIGATIONS

3.10.a Entry During Election Campaigns (Section 96)

It is often the practice during election campaigns for canvassers to drop information outside the doors of suites (presumably because there is insufficient room to slide the information under the door). As this creates a litter

problem for landlords, the Committee proposes that Section 96 be amended to prohibit littering.

RECOMMENDATION 84.

Section 96, Entry During Election Campaigns, be amended to include a reference that election literature must be distributed in such a manner that it does not cause litter.

3.10.b **Safety Devices on Premises** [Section 97(2)]

The Act states that locks to premises are to be provided. However, in order to close a minor loophole which has been a stumbling block to resolving disputes, the Committee proposes that providing doors (and maintaining them) also be clearly stated as an obligation in this section of the Act.

RECOMMENDATION 85.

Section 97(2), Safety Devices on Premises, should be amended to clearly state that landlords are obligated to install locking devices and doors, and maintain them in working order.

3.10.c **Alteration of Locks** [Section 97(1)]

The current provision on locks refers to locks of doors giving entry to the suite. The Committee proposes that entry doors to the building also be included. This minor housekeeping item will ensure that tenants' rights to entry are better protected.

RECOMMENDATION 86.

Section 97(1), Alteration of Locks, should be amended so that entry doors to the building are included under this provision.

3.10.d **Alteration of Service Door Locks**

The Committee debated the question of inclusion of a provision on the alteration of service door locks (saunas, pools, etc.) (which may occur when something breaks and/or when a landlord shuts down a service). Landlords feel that this should not be included in the Act as it is possible that a service could break down that is not worth fixing. The Coordinator of Appeals feels such services are beyond the tenant's leasehold interest.

Tenants, however, agree with the former Director of the Landlord and Tenant Affairs Branch, that while such matters fall under the Residential Rent Regulation Act, they are difficult to deal with as it is hard to establish a dollar value for the service withdrawn to determine a rent reduction.

They should, therefore, be dealt with by mediation/reinstatement under the Landlord and Tenant Act. The Middle Income Tenant Representative has, throughout the review of both Acts, firmly and repeatedly stated his belief that when a service has been temporarily withdrawn, tenants should receive some form of compensation or rent abatement as they are paying for a service they are no longer receiving. Tenants noted that this could be something for the housing court to deal with.

NO CONSENSUS on the proposal that landlords be obligated to not alter locks on doors giving entry to services.

3.10.e **Privacy** [Section 95(1)]

Landlords note that they have a problem with this section as there are instances where a tenant requests repairs and then does not allow the workman in without a further 24 hours notice. Secondly, landlords have problems arranging for plumbers, etc. for specific days and hours.

It is suggested that landlords should give tenants a date with a range of times to choose from to allow for prearranged nonemergency repairs to be scheduled.

RECOMMENDATION 87.

On a tenant initiated request for repair, a form (similar to the Rentalsman's Formal Request for Repair Form) specifying preferred times (a.m. or p.m.) be given to the tenant, and that when it is completed, the 24 hours notice to enter by the landlord would not be required. However, if landlords do not enter in the preferred times specified by the tenant, he/she must comply with the 24 hours notice provisions.

The remainder of Section 95(1) shall remain unchanged with the exception that the notice times referred to shall be changed to "not more than 2 weeks or less than 24 hours."

3.10.f **Postdated Cheques** [Section 84(3)]

RECOMMENDATION 88.

The Committee recommends that Section 84(3) be amended so that postdated cheques cannot be demanded [Section 84(3) should reference 84(4)].

3.11 **OTHER OBLIGATIONS**

In order to ensure that all rights and duties are clearly spelled out, the Committee proposes that all obligations referred to or implied in the Act should be put together for communications purposes.

3.11.a **To Comply with Notice Provisions**

RECOMMENDATION 89.

Landlords are obligated to comply with all notice provisions of the Act.

3.11.b **To Return Security Deposit**

RECOMMENDATION 90.

Landlords are obligated to return the security deposit in the time and manner specified in the Act.

3.11.c **Consent to Assign or Sublet** [Section 93(3)]

No change recommended.

3.11.d **Terminations of Tenancies**

RECOMMENDATION 91.

Landlords are prohibited from terminating tenancies except for the reasons, and in the manner, specified in the Act.

NOTE: See Section 6, Fees, for a discussion on fees allowed and prohibited.

4. OBLIGATIONS OF TENANTS [Section 98(2)]

In keeping with the intent of ensuring that everyone is clear about what their responsibilities are, the Committee has reviewed the current provisions for tenants' obligations and is proposing several changes to amend existing provisions and to spell out tenants' duties more clearly and comprehensively.

4.1 TO TAKE REASONABLE CARE [Section 98(2)(b)]

In order to clarify the fact that a tenant is responsible for repairing his/her own damage only to the standard in existence prior to the damage, the Committee proposes that Section 98(2)(b) be amended. Thus a tenant would not be expected to replace indoor/outdoor carpet with expensive broadloom.

RECOMMENDATION 92.

Section 98(2)(b), Responsibility of a Tenant, should be amended so that tenants are responsible for repairing damage, where reasonable, to the same standard as existed prior to the damage occurring.

4.2 FAILURE TO TAKE REASONABLE CARE [Section 98(3)]

Besides the current provisions, which allow landlords to terminate a tenancy for failure of a tenant to take reasonable care of the premises, landlords propose that the Act be changed so that they can collect damages from tenants while in occupancy without having to terminate the tenancy. This proposal was left for discussion for after the final deliberations on the housing court. In addition, the Committee proposes that tenants as well as landlords be subject to termination for contraventions of health and safety standards. Amending the wording of the Act, would ensure a greater degree of clarity than currently exists.

4.2.a Contravention of Health and Safety Standards

RECOMMENDATION 93.

A contravention of a health and safety standard required by law, through any willful or negligent act or omission by him/herself or others permitted on the premises by the tenant, should be grounds for termination of the tenancy.

4.2.b Criminal Proceedings

Landlords and tenants are in agreement that a big problem is the lack of police and court action taken against destructive tenants. While recognizing that the police may have their own priorities, most of the Committee feels that it is

insufficient for landlords to be told that they should call the Rentalsman and deal with the damaging tenant under the recourses available under the Landlord and Tenant Act (termination). Landlords note that terminating a tenancy does not happen immediately and that they are left with a hostile tenant occupying the rented premises. They feel that stronger sanctions will deter those tenants from causing damage.

In addition, landlords propose that N.S.F. cheques be made an offence under the Landlord and Tenant Act.

RECOMMENDATION 94.

The Committee proposes that breaches of the Criminal Code, regardless of the fact that they may be breaches of the Landlord and Tenant Act, be acted upon by the police. The Minister of Housing should inform the Attorney General of the Committee's concern over lack of police action in landlord-tenant disputes.

4.3 TO NOT PLACE PROPERTY IN JEOPARDY

In addition to taking care of the premises, landlords want it spelled out that such actions which may place the premises in physical jeopardy (motorcyles in apartments), should also be included under tenant responsibilities.

RECOMMENDATION 95.

Tenants are obligated to not place the rented property or premises in physical jeopardy.

4.4 TO AVOID CAUSING A NUISANCE AND DISTURBANCE [Section 98(2)(c)]

Because the wording of this section refers to not disturbing people in the same building, rental premises such as row houses, mobile home parks, and complexes of more than one building are excluded from coverage. The Committee therefore proposes that Section 98(2)(c) be amended to include them. It also wants it made clear that tenants are responsible for the behaviour of their guests not only in the rental unit but in the entire building.

RECOMMENDATION 96.

Section 98(2)(c), Responsibility of Tenant, should be changed so that tenants should avoid disturbing, not only other persons resident in the building, but also those in the "same complex of buildings". This section should be amended to include the tenant's responsibility for guests, not only in

the suite, but also in the building. (Legislative draftsman to note that the intent is for this to cover mobile home parks as well).

4.4.a **Creating a Nuisance and Disturbance** [Section 98(4)]

Landlords feel that besides the right to terminate tenancies, violations should be prosecutable as criminal offences. Tenants, however, feel that the provisions of the Act are sufficient and the fact that prosecutions do not occur for criminal code violations is a separate matter. However, the Committee does feel that the wording of Section 98(4) is ambiguous and should be changed.

RECOMMENDATION 97.

Section 98(4) should be rewritten to take into account Recommendation 49 and to correct the ambiguous wording relating to landlords taking action when residents are disturbed.

4.5 **TO FULFILL RESPONSIBILITY FOR SERVICES**

While tenants must fulfill the obligations they agreed to under the tenancy agreement, the Committee proposes that the section of the Act dealing with tenant responsibilities include a reference to tenants' responsibilities for provision of services agreed to (gas, hydro, etc.).

RECOMMENDATION 98.

Tenants are responsible for fulfilling any obligations for the provision of services which are the tenant's responsibility under the tenancy agreement.

4.6 **TO VACATE AT THE END OF THE TENANCY**

The Committee wants it made clear that tenants are prohibited from overholding the suite after the tenancy has expired. They note that one person overholding could create a chain reaction effect for those tenants moving in and out. While the Act states that tenants must compensate landlords for overholding [Section 107(1)], the Committee proposes that the amount of compensation be spelled out. One should note, however, that the Committee had intended to discuss the issue of compensation further after the completion of the housing court deliberations.

RECOMMENDATION 99.

Tenants are prohibited from overholding the suite once the tenancy agreement has expired.

4.6.a **Failure to Vacate** [Section 107(1)]

RECOMMENDATION 100.

Section 107(1), Compensation When Premises Not Vacated, should be amended to state "that compensation should be based on a per diem basis of the legal monthly rent."

4.7 **TO PAY RENT WHEN DUE**

While the obligation to pay rent may seem obvious, and is alluded to in Section 104(1) of the Act, the Committee wants it clearly listed along with other obligations.

RECOMMENDATION 101.

Tenants are obligated to pay the rent when it is due.

4.7.a **Failure to Pay Rent When Due** [Section 104(1)]

Besides terminations for not paying rent, the Committee is proposing in addition, that habitually late payment of rent be included as a possible grounds for termination (at the landlord's option).

RECOMMENDATION 102.

Section 104(1) be amended so that failure to pay rent on time for three consecutive months without good or sufficient reason should constitute, at the landlord's option, grounds for the termination of the tenancy.

NOTE: Legislative draftsman to note that this will require an amendment to Section 110(1), Hearing of Application.

4.8 **TO NOT IMPEDE LANDLORD FROM SHOWING THE SUITE** [Section 95(1)]

Again, this obligation is referred to in Section 95(1), Privacy, but the Committee feels it should be clearly stated along with other obligations. As a way of ensuring that tenants are not disturbed by requests to show the suite, the Committee proposes that hours be stated in the Act.

RECOMMENDATION 103.

Tenants are obligated to not unreasonably impede the landlord's ability to show the rented premises to prospective tenants (after notice of termination has been given) or to prospective purchasers between the hours of 9 a.m. and 9 p.m. (The representative of the Rent Appeal Panelists notes that evening hours can be a problem for disabled people and, therefore, suggests that the hours be put in the Regulations or in a policy guideline).

4.9 TO USE THE PREMISES FOR PURPOSES INTENDED

Tenants are obligated by the provisions of the tenancy agreement to use the premises for purposes agreed to with the landlord. This obligation, it is proposed, should be stated in the Act along with all other obligations.

RECOMMENDATION 104.

Tenants are obligated to use the premises only for residential purposes unless otherwise stated in the tenancy agreement.

4.10 TO GIVE NOTICE IN WRITING

Landlords agreed to the inclusion of the responsibility to make the premises available but felt some protection was necessary to deal with situations in which tenants give oral notice to the landlords and then subsequently change their minds (with or without notifying the landlord who may have already rented the suite).

Currently, the Act [Section 101(6)] allows the landlord to request written notice and if the tenant refuses to sign, the notice is deemed not to have been given.

However, tenants feel that when a tenant gives notice orally and refuses to sign a written notice at the landlord's request, the notice should stand.

NO CONSENSUS on the landlords' proposal that tenants should give notice in writing (which may be on a simple form prescribed in the Regulations).

4.10.a Failure to Give Notice in Writing

The Act currently states that if tenants on long term leases fail to renew their tenancy agreements [Section 103(8)], it is the same as giving notice. However, the Act remains silent on renewals of month to month tenancies. In order to enforce the provision for written notice (Recommendation 59), the Committee recommends that failure of tenants on month to month tenancies to give written notice should be deemed to be a renewal of the tenancy. In that way, the risk of having unrented suites or suites rented twice would be reduced.

RECOMMENDATION 106.

Failure of a tenant on a month to month tenancy to give notice in writing or on the prescribed form is deemed to be a renewal of the tenancy.

4.11 OTHER OBLIGATIONS

In keeping with the intent of having all obligations clearly spelled out, the Committee notes the following obligations of tenants currently in the Act but does not propose any changes to them:

4.11.a To Maintain Orderly Cleanliness [Section 98(2)(a)]

No change recommended.

4.11.b To Not Alter Locking Systems [Section 97(1)]

No Change Recommended.

4.11.c To Comply With All Notice Provisions

Tenants are obligated to comply with all notice provisions of the Act.

4.12 ELECTION SIGNS

Landlords note that it has become more common of late for large election signs to be attached to balconies of high rise apartment buildings. They are concerned for safety reasons that signs which are improperly attached may fall and hurt people. The Committee, therefore, proposes that externally attached election signs be prohibited.

RECOMMENDATION 107.

Externally attached election signs should be prohibited.

5. POSSESSIONS AND EVICTIONS

Certainly one of the greatest concerns held by landlords regards difficulties in terminating tenancies. Included among their concerns are the problems related to the Court system which are discussed in Part IV. In addition to the proposal for the Residential Tenancies Board, the Committee discussed several ways in which the current provisions could be improved upon should the Board not be created or not have the power to deal with evictions and possessions.

5.1 EVICTION DURING THE SCHOOL YEAR [Section 113(4)]

The provisions of Section 113(4) prohibits evictions of tenants with school age children during the school year except where a tenant is in arrears, or has failed to live up to his/her responsibilities or the premises have been sold and the new owner intends to occupy the premises. Because of the nature of the notice provisions and provisions for renewal of tenancy agreements, landlords who wish to occupy the premises or wish to renovate the premises may never be able to do so as the requirements of Section 103(6)(7) are for tenancy agreements to be renewed for the same term: thus 12 month leases coming up for renewal during the year have to be renewed for another year (making it impossible to terminate a tenancy during July and August when school is out).

The Committee proposes that these provisions be changed so that a landlord requiring a suite, occupied by tenants with school age children, for his own use or for renovation or demolition may serve notice for a possession date in July and August and does not have to renew a tenancy for a whole term.

RECOMMENDATION 108.

A landlord requiring a suite for reasons of demolition, renovation or own use [Section 103(4)(c),(d),(e) and 113(6)] and in which a school age child resides, notwithstanding the provisions for renewal of tenancy agreements [Section 103(7)(8)], may serve notice for a July-August possession and is not obligated to renew a tenancy agreement for a period beyond that time. [Legislative draftsman to refer to Section 101(9) for example of wording.] (Landlords must still comply with the notice provisions).

5.2 FIXED TIME PERIODS FOR RENTALSMAN'S REPORTS [Section 98(6)]

In order to speed up the process for possessions and evictions, the Committee proposes that when a judge requests a report from the Rentalsman, that it be done within fixed time periods. The Committee hopes that this will result in speedier action by the Rentalsman.

RECOMMENDATION 109.

Reports to judges by the Rentalsman under Section 98(6), Nuisance and Disturbance, and Section 110(4), Orders for Possession, should be done in a time period, fixed by the judge, of up to 30 days duration (extensions may be granted upon request).

5.3 SUBSTITUTIONAL SERVICE

One manner in which some tenants attempt to prevent or delay having their tenancies terminated is to continue to occupy the premises after the termination date and then avoid the landlord's attempts at service of applications for Orders of Possession and supporting affidavits.

Landlords must then apply to the court for substitutional service by way of an originating notice of motion. In order to cut down on the time delays caused by tenants who are avoiding service, the Committee recommends that requests for substitutional service be done by direct application.

RECOMMENDATION 110.

Requests for substitutional service should be by direct application to a judge rather than by originating notice of motion.

5.4 SALE TO REMOVE TENANTS [Section 103(5)]

In order to ensure that landlords do not sell a rental property for the sole purpose of removing tenants, the Committee proposes that it be made an offence under the Act to do so.

RECOMMENDATION 111.

The non-arms length sale of a rented property for the sole purpose of terminating a tenancy should be an offence under the Act [inclusion of 113(6), Possession After Sale, under offences of 103(5)].

5.5 COMPENSATION FOR MOVING EXPENSES [Section 103(4.4)]

Section 103(4.4) allows for tenants whose tenancy agreement is broken to receive up to $250 compensation for moving from the landlord.

The landlords feel that these provisions were arrived at by compromise and should not be changed. They do not experience many problems with these provisions and feel that $250 is more than adequate to cover moving costs.

Tenants, on the other hand, feel that breaking a tenancy agreement is an extremely serious matter and that for many

elderly people, it can be a very traumatic experience. They recognize that for some people $250 is more than enough compensation, but for others, it is insufficient. They propose that the provisions should have the maximum of $250 removed and that actual moving expenses be allowed along with compensation for trauma, etc.

The representative of the Rent Appeal Panelists agrees with tenants that in some cases $250 may be a windfall and in others, an insufficient amount. However, she proposes that a maximum amount of compensation be specified in the Regulations which could be awarded after adjudication.

The Deputy Rentalsman agrees that a maximum be specified but also proposes that when a building is being renovated that tenants should be given an empty suite if one is available in order to prevent relocation from occurring.

NO CONSENSUS on the tenants' proposal to have the $250 ceiling on compensation for moving expenses removed.

5.6 **POSSESSION AFTER SALE** [Section 113(6)]

In order to have the provisions of this section conform to the Rentalsman's interpretation of "bona fide sale", the Committee proposes, as a matter of housekeeping, to have the Rentalsman's definition of bona fide included in Section 113(6). The need for such a provision is a result of lengthy time delays in registering properties at the Land Titles Office.

RECOMMENDATION 112.

Section 113(6), Possession After Sale, should include the following definition of "bona fide":

When there has been an offer, acceptance, and all conditions relating to the sale are completed, and only the formality of registration of documents remains, the sale is essentially complete and, therefore, bona fide.

6. FEES

The Committee reviewed the variety of fees charged by landlords, some of which the Act comments upon and others upon which the Act is silent. The Committee feels that, in order to preclude the possibility of illegal fees being charged, the Act should reference all fees.

6.1 SUBLET AND ASSIGNMENT FEES [Section 93(4)]

While not objecting to landlords charging a fee for subletting or assigning suites, tenants feel that the wording of the provision should indicate more clearly that such fees should be charged only for work actually done.

RECOMMENDATION 113.

Landlords may charge a fee, not exceeding the sum of $20.00, for work actually done (reference checks, paperwork, etc.) in subletting or assigning suites by tenants.

6.2 APPLICATION FEES

Landlords and tenants agree that the practice of some landlords in charging a fee to rent suites should be prohibited under the Act.

RECOMMENDATION 114.

Application fees to rent suites should be prohibited under the Act.

6.3 GARAGE DOOR OPENER FEES

The practice of charging a separate fee for electronic garage door openers by some landlords was brought to the Committee's attention. The Committee feels that such charges should be part of the security deposit but does not object to an extra charge where a tenant who has only one parking stall desires an additional device (one parking stall - one door opener).

RECOMMENDATION 115.

Garage door opener fees should be part of the security deposit (not intended to prohibit an additional charge where an additional opener is requested for the rental of the same parking stall).

6.4 FEES TO LIQUIDATE LEASES

When a tenant on a long term tenancy agreement wishes to get out of the lease prior to its expiration, it is sometimes the practice to reach a private arrangement with the landlord to buy out of the lease.

Tenant representatives propose that, in addition to such private arrangements, tenants have the option of sending the monthly rent to the Rentalsman who would disperse it to the landlord monthly until such time as the landlord has rerented the suite (landlords would be obligated to rerent as soon as possible). Such an arrangement would provide tenants with an opportunity to get out of a lease with the least possible expense while, at the same time, prevent landlords from losing any revenue (but also not collecting rent twice for the same suite - the result of having the first tenant pay and then collecting again when the suite is rerented).

RECOMMENDATION 116.

Where a tenant wishes to buy out of a lease, he/she can choose, either to make a private arrangement with the landlord, or apply to the Residential Tenancies Board to be allowed to send the remainder of the rent owing on the lease to the Rentalsman monthly who will disburse it to the landlord for the period of time in which the suite remains unrented and return the excess amount to the tenant once the suite is rerented (landlords are obligated to rerent the suite as soon as possible, and the Residential Tenancies Board is obligated to ensure that its order is filed with a Court so as to ensure that the tenant remains liable should he/she default).

6.5 FEES TO VACATE [Section 101(5)]

Fees to vacate are prohibited - no change recommended to this provision.

7. SUBLETTING OR ASSIGNING OF SUITES [Section 93(3)]

The Committee is proposing a major clarification on the subletting and assignment of rental premises in order to encourage landlords to follow what has become an accepted practice in the industry. Current public understanding fails to differentiate between the legal differences of subletting and assignments: assigning of tenancy means that all rights under the tenancy agreement are given to a new tenant. This is usually done when the tenant does not intend to return to the tenancy and wants no further obligation. However, a real sublet means the tenant intends to return, and assumes the status of a sublandlord: responsible for the actions of the subtenant (for rent, repairs, etc.),

Currently, many landlords prefer to cancel a lease rather than have a tenant sublet. A new lease is drawn up for the new tenant and the previous tenant's security deposit is settled up and a new one given by the new tenant. This means the previous tenant is no longer liable and is done because in practice, under a sublet, the landlord would have difficulty collecting from the prime tenant.

The changes proposed by the Committee are aimed at clearly spelling out the difference between sublets and assignments and encouraging tenants and landlords to choose the one which is appropriate based upon the tenant's desire to reclaim possession: if a tenant wishes to sublet for a short period of time and then reclaim possession, he/she would act like a sublandlord and be responsible for the subtenant. The prime tenant could exact a security deposit and would have to give one month's notice to the subtenant before reclaiming possession of the rented premises.

However, when a tenant does not wish to return, the assignment option should be taken: a new tenant is found and the landlord ends the previous tenancy agreement and draws up a new one. However, in order to protect landlords from having short term rentals, it is proposed that landlords be allowed to require the new tenant to take a lease for the period remaining in the existing one plus a year: if the prospective tenant refuses, a new tenant would have to be found.

Because the proposed change is so substantial, the Committee recommends that a major educational campaign be conducted among landlords and tenants.

RECOMMENDATION 117.

(a) Tenants may sublet the rented premises only when they wish to maintain the right to reclaim possession and with the landlord's consent (which cannot be arbitrarily or unreasonably withheld) but shall remain liable for the fulfillment of all tenant responsibilities for

the duration of the tenancy agreement: the prime tenant becomes a sublandlord and may require the subtenant to pay him/her a security deposit and is required to serve the subtenant with one month's notice prior to regaining the rented premises.

(b) Tenants may assign the premises with the landlord's consent (which cannot be arbitrarily or unreasonably withheld) and settle up the security deposit. However,

(i) if the assignment occurs before the three month period prior to the expiry date of the existing tenancy agreement [Section 103(7)], then the period of assignment shall be to the end of the lease unless the landlord and assignee make a private arrangement to end the existing lease and start a new one; or,

(ii) if the assignment occurs during the three month period prior to the expiry date of the existing tenancy agreement, then the period of assignment may be to the end of the lease period or the landlord may require the assignee to accept a new lease for a period of time of one year plus the time remaining on the existing lease. In the event that the prospective tenant declines to accept the landlord's lease, the prime tenant should find a new prospective tenant.

8. **ABANDONMENT** (Section 94)

Abandonment is when the tenant knowingly relinquishes the rented premises with no intent to return. However, implicit to the issue is not only the abandonment of the premises but also the abandonment of the chattels. These two primary aspects of abandonment are dealt with in Section 94 of the Act.

The Committee regards the major weakness in the provisions to be the method of determining whether or not the premises have been abandoned. Currently, landlords make the determination and if they have erred, they leave themselves open to a charge for wrongful possession. In order better to protect both landlords and tenants, the Committee proposes that a neutral third party, the Rentalsman, be given the authority to determine whether or not the premises have been abandoned. This will protect tenants who have not abandoned while at the same time protect landlords from potential criminal charges and allow them a speedier mechanism to resolve the matter and to rerent the premises thereby reducing lost revenue.

In terms of the second issue, the treatment of the chattels, the Committee recommends that where the Rentalsman is called upon by the landlord to determine whether the premises have been abandoned, the Rentalsman should complete an inventory of the tenant's goods and a condition report. These measures will ensure that the tenant's possessions are officially accounted for. Because rent arrears and damages may coincide with abandonment, the Committee proposes allowing the money from the sale of the tenant's chattels to be applied against other claims (besides the cost of removal, storage and sale) rather than having to return the excess money to the tenant as is currently required. In addition, the Committee recommends that the rights of third parties (friends, conditional sales contracts) be given additional protection by the creation of a registry of rented property (this is in addition to the Personal Property Registry).

It is recognized that the procedures outlined below represent a dramatic increase in the speed with which a landlord may obtain a determination of abandonment. This is done to protect the interests of landlords when there is a clear case of abandonment (usually accompanied by damage to the suite) and where a lengthy procedure would serve only to increase the cost to both parties.

At the same time, there are instances where individuals appear to have abandoned suites but are simply incapacitated or away on vacation. It is for that reason that the procedures suggested would only commence, with the exception of notices or the removal of chattel, after the elapse of five days from the date on which the rent is due, at which time

the landlord already has the right to seek possession. It is also for that reason that guidelines on what constitutes reasonable efforts by a landlord to contact the tenant, are provided.

NEAR CONSENSUS on the following proposal (all in favour except the representative of the Manitoba Landlords Association):

A. <u>Determination of Abandonment</u>

A landlord may apply for a determination of abandonment where:

1. the tenant gives to the landlord an express oral or written notice of his intention not to return to the rented premises; or

2. a tenant has substantially removed all of his personal chattels or belongings from the rented premises (including garages, lockers, or other areas to which the tenant had access under the tenancy agreement);

A landlord may also apply for a determination of abandonment where:

3. five days have elapsed since the date on which the rent was due; and

4. there has been no communication between the landlord and the tenant; and

5. the landlord has, after giving proper notice, inspected the suite and believes that the tenant has abandoned or has applied to the Rentalsman for an order of entry; and

6. the landlord has made all reasonable efforts to contact the tenant by:

   (a) attempting service upon the tenant at the tenant's premises;

   (b) making inquiries of the tenant's personal references listed on the application for tenancy;

   (c) contacting the tenant's regular place of employment, if it is known to him;

   (d) contacting the tenant's immediate family if they are known to him; and

(e) inquiring of police and hospital authorities to determine if the tenant has been incarcerated or incapacitated.

B. Mitigation of Damages [Section 94(1)]

No change recommended to Section 94(1).

C. Storage of Personal Property [Section 94(2)]

The period for storage should be increased from two months to three months and where a Rentalsman makes a determination of abandonment, a Rentalsman's Officer shall inspect the premises, complete an inventory of the tenant's personal property, and complete a condition report on the rented premises.

Where the value of the tenant's property exceeds an amount that would cover the cost of storage and sale, the Rentalsman's Officer shall order that the property be placed in storage and that the landlord contact a licensed auctioneer to appraise the value of the property.

D. Property of Insufficient Value [Section 94(2.1)]

(i) Subsection (a), worthless, should be deleted;

(ii) Subsection (c), sale of property of insufficient value, should be amended as follows:

The Rentalsman, using the power he has to impose terms and conditions or to permit the disposal of personal property, can issue an order to the landlord for the storage of the personal property for a period of less than three months and for the disposal by sale or auction of the goods at the end of that period; or for the immediate disposal of the goods, by sale through a recognized second hand dealer or a licensed auctioneer.

E. Sale of Personal Property [Section 94(3)]

Section 94(3)(a) should be amended: to indicate the amount of any judgement given by the Rentalsman or housing tribunal; and the reference to property unclaimed after two months should be changed to three months; and proceeds from the sale should be used to cover arrears and damages after storage costs and fees, with the remainder going to the tenant.

F. Rights of Encumbrancers

In instances where the personal property is consigned to a licensed auctioneer, it is the duty of the licensed auctioneer to check the registry of personal property. If there is no similar requirement on licensed second hand dealers, it is recommended that when property is to be sold through a second hand dealer, the landlord be required to check the personal property registry.

As the check with the personal property registry will not cover property that has been rented by the tenant, it is suggested that the Rentalsman's Office establish an information centre on chattels and that companies which rent furniture and appliances to tenants be encouraged to register the rental information with the Office of the Rentalsman. The information centre would also maintain information on the sale of goods and the disposition of funds. Information in the registry would be available to landlords upon a determination of abandonment, and to tenants who have been found to have abandoned premises.

G. Role of Rentalsman/Residential Tenancies Board

In order for this system to work quickly and effectively, the Rentalsman or Board must retain the authority to make determinations with respect to any aspect of abandonment. This would include the value of chattels, the terms and conditions of any sale or disposition, the supervision of and release of chattels to an encumbrancer, and any costs arising from the abandonment or the storage and sale of the chattels.

H. Penalties

Landlords who obtain a determination or who attempt to obtain a determination based on false or incorrect information should be severely penalized (including prosecutions).

I. Education

Abandonment procedures, including the time frame, should be brought to the attention of tenants either in the standard lease form or in a handout to be given to tenants at the time of occupancy.

9. MOBILE HOMES

The present Act contains very few special provisions governing mobile homes and basically treats them as any other rental property. Some other provinces have recognized the special problems associated with mobile homes (the renter of a mobile home pad is also an owner; the high cost of moving mobile homes; need for special notice times; fees; damages; and the need for special rules, etc.) and have proclaimed either a separate act (Alberta) for mobiles homes or special sections (Ontario and Quebec) of existing legislation.

The Committee, after hearing presentations from mobile park and mobile home owners, recognizes the complexity of the issue and proposes that the provisions in the Act governing mobile homes be expanded and contained in a separate section of the Act.

Recommendation 118.

The Act should contain a special section dealing with mobile homes which besides the current provisions (as amended) contains provisions which:

(i) do not restrict a tenant's right to sell, lease or otherwise part with possession of the mobile home;

(ii) allow a tenant to lease the mobile home and sublet the mobile home site subject to the landlord's refusal on reasonable grounds;

(iii) do not restrict the tenant's right to remove the mobile home from the mobile home site/park;

(iv) do not restrict the tenant's right to employ qualified tradespeople to connect services/utilities to the mobile home;

(v) do not restrict the tenant's right to employ qualified tradespeople to install/remove the mobile home;

(vi) do not restrict the tenant's right to purchase goods and services from the person of their choice;

(vii) do not require the tenant to install permanent fixtures on the mobile home site;

(viii) obligate the landlord (in addition to other obligations in the Act) to provide: for snow removal from roads, common areas, and access locations in the park; for garbage removal; for road maintenance; for provision of services that the landlord has undertaken to provide [including those which the landlord provides himself without purchase - amendment to 98(7)];

(ix) obligate the tenant (in addition to other obligations in the Act): to maintain the exterior of the mobile home in a good state of repair and cleanliness (guidelines to be written); to avoid causing a nuisance and disturbance to other residents of the mobile home park; and to maintain the mobile home in such an order that it would not negatively influence other tenants;

(x) allow for a minimum of one month's notice of termination by the landlord for tenant default, and for a minimum of six month's notice for change of use of the park (in turn the tenant may then terminate with one month's notice);

(xi) clarify the rights of landlords to apply to the Residential Tenancies Board/Court for direction in dealing with abandoned mobile homes;

(xii) spell out the role of the Residential Tenancies Board/Rentalsman in settling disputes;

(xiii) clarify situations in which rents are seized by municipalities for unpaid taxes so as to ensure that mobile home owners continue to receive services and are able to remove their homes from the park.

10. LONG TERM RESIDENTS IN HOTELS

The representative of the Rent Appeals Panelists raised a concern regarding protection for long term residents in hotels: how to prevent wholesale evictions as occurred in Vancouver prior to Expo.

The Deputy Rentalsman informed the Committee that as far as current interpretation of the law in Manitoba is concerned, where there is unrestricted access and residents are allowed to cook, a landlord-tenant relationship would be considered to exist and residents would, therefore, have protection under the Landlord and Tenant Act. While this would provide some protection, the Committee recognizes that economic evictions through large rent increases could still occur as hotels are exempt from the Rent Regulation Act.

In order to clarify the present interpretation of the status of long term hotel residents, the Committee proposes that the Act comment upon them rather than remain silent.

RECOMMENDATION 119.

Long term residents in hotels whose situation meets the requirements of tenancies, should be afforded all the rights and protections of a tenancy.

NOTE: Legislative Counsel to note that this may impinge on the Hotel and Board Keepers Act.

11. THERAPEUTIC INSTITUTIONS

The Committee received a submission on behalf of an institution that provides both housing and training for independent living, requesting a change to the Act: limiting the security of tenure to the duration of the training program. Their request stemmed from a situation in which they were unsuccessful at terminating a resident whose training had ceased.

The Committee agreed with the legitimacy of the request and proposes that in these type of situations security of tenure be conditional upon the training period.

RECOMMENDATION 120.

When housing is provided as part of training, security of tenure should be conditional upon the duration of training.

LANDLORD AND TENANT REVIEW COMMITTEE
PART IV: ADMINISTRATION

The Committee's mandate includes the review of both the legislation and its administration. The Residential Rent Regulation Act is administered by the Rent Regulation Section and the Rent Appeals Branch (of the Landlord and Tenant Affairs Division) while the Landlord and Tenant Act is administered by the Rentalsman Section. The administrative setup is a result of the recent amalgamation of Rent Regulation and Rentalsman functions by the Department of Housing under the Landlord and Tenant Affairs Branch.

1. RENTALSMAN SECTION

Landlords and tenants expressed outrage at the attitude, response, and treatment they often receive from some Officers of the Rentalsman's Section. The Committee notes that many of the problems they experience can be corrected with clearly written legislation, creation of a procedural manual, efficient use of staff and additional staffing and adequate training. They further recognize that the past and current Directors of the Landlord and Tenant Affairs Branch and the Department have initiated actions to improve the situation.

Landlords and tenants identified specific concerns they have with the administration:

(i) attitude of some Officers;
(ii) inadequate training;
(iii) function of Officers - administrative functions of investigation and mediation should be separate from adjudicative functions;
(iv) improved information for the public;
(v) improved public access;
(vi) length of time for resolving disputes;
(vii) professional fact-finding inspections.

The new Director of the Branch feels that many of the problems can be dealt with by proper direction and training. He has recently taken steps: to develop a procedures manual which will improve the consistency of decisions made by Officers; to develop data profiles on security deposit and repair disputes to help streamline the decision-making process; to review the functions and workload of the Officers; and to develop a profile of the rental housing market.

The Committee proposes that Officers be separated by their four different functions: information, investigation, mediation and adjudication. However, as far as adjudication is concerned, the Committee expresses its preference for adjudication to be handled by a Residential Tenancies Board, but failing that, they would like to see a separate adjudication section created in the Branch so as to ensure a complete separation from the mediation and investigation functions.

Should this occur, the Committee proposes that decisions be appealable to the Appeals Panels. (See Part V, for a more complete discussion of the Residential Tenancies Board).

RECOMMENDATION 121.

The Officers of the Rentalsman's Section should be reorganized into specialized areas:

(a) Information: to provide information about the Act (law) and about procedures (administration).

(i) Phone Information - general information/no advice.

(ii) Drop-In Information - hours available to the working public (Note: M.G.E.A. issue).

(iii) Paper Information - information bulletins, written in simple language (one sheet per topic); policy and procedures manual available for viewing with xeroxed excerpts; public access to legal opinions.

(iv) Active distribution of information (not reactive).

(v) Referral Information - Officers should be familiar with other agencies and Government Departments so as to make proper referrals when needed.

(b) Investigation: to receive and investigate complaints (or on own initiative) about condition reports, repairs, nuisance and disturbance, withdrawal of services, non-payment of rent, terminations and right to continue in occupancy, proper service of notice and without limiting the generality of the foregoing, any other such matters relating to the tenancy.

(i) Investigations are to be strictly fact-finding with no attempt being made to either render opinions or to resolve the matter.

(ii) Investigators are to issue proper reports (upon completion of the investigation) to the Director or person designated by the Director and to both parties (reports to the parties should not contain references to other tenants' names).

(iii) The Director (or person designated) shall decide upon the action to be taken: mediation, adjudication, or referral to other agencies.

(iv) The Director shall report any suspected violations of the Criminal Code to the Attorney General's Department.

(v) Landlords and tenants should be prohibited from impeding or obstructing Officers in the performance of their duties and functions.

(c) Mediation: to mediate disputes referred by the Director or his designate within time limits set by the Director (and with the right of the Director to grant extensions) and according to guidelines and procedures laid out in the procedures manual.

(i) Either party may reject mediation.

(ii) Director or his designate may, if of the opinion that the matter/situation is such that mediation won't work or is not desirable, send the matter directly to adjudication.

IN THE EVENT THE RESIDENTIAL TENANCIES BOARD IS NOT ESTABLISHED :

(d) Adjudication: this function is affected by the outcome of the housing court question. Should the Residential Tenancies Board not occur, then the Committee proposes an adjudication section of the Branch be created and staffed by well trained people.

(i) Adjudications shall be appealable to a Panel/ Court.

(ii) Orders of Possession are to go straight to court.

(iii) Arbitration by consent without appeal should continue.

2. STATISTICAL INFORMATION

The Committee is making some specific comments regarding the statistical data kept by the Branch as there have been many instances where Committee members experienced frustration in trying to assess issues, because the information was not available.

RECOMMENDATION 122.

The Landlord and Tenant Affairs Branch should be keeping more comprehensive statistical information, ie. number and type of complaints, volume of cases handled by Officers, time taken to resolve problems, etc.

3. FORMS USED BY THE RENT REGULATION SECTION

3.1 INFORMATION ON NOTICE OF RECOMMENDATION FORM

The Committee is also proposing that Notice of Recommendation Forms contain comprehensive information to enable tenants to understand why a rent recommendation was made.

RECOMMENDATION 123.

The Notice of Recommendation Form should include the Officer's reasons for the recommendation, the rent increase applied for, the Guideline, and the percentage of the rent increase (the former Director of the Branch feels that including the guideline is unnecessary) (also see Recommendation 19).

3.2 NOTICE OF HEARING FORMS

The Committee also proposes, in order to ensure that people appealing Officer's recommendations show up for the Appeal, that the Notice of Hearing Form be changed.

RECOMMENDATION 124.

The Notice of Hearing Form should include a statement that "failure to appear may result in the dismissal of the Appeal."

3.3 TENANT/LANDLORD ADVISER

RECOMMENDATION 125.

All forms of the Branch should include a reference to, and phone number of, the Tenant/Landlord Adviser.

Also see Recommendations 14, 27, 36, 40, 57.

4. AUDIT OF THE BRANCH

The Committee feels it is unable to fully review the administration to its satisfaction. It, therefore, is recommending that a complete audit be done within 12 months.

RECOMMENDATION 126.

An internal systems audit of all procedures of the Landlord and Tenant Affairs Branch should be done within 12 months to ensure a better flow of information to the public, better public service and a more efficient operation.

5. TENANT/LANDLORD ADVISER

The Committee proposes that a Tenant/Landlord Adviser position be created in the Landlord and Tenant Affairs Branch. This person would be available to provide information and to advise tenants and landlords of their rights. Such a position, the Committee feels, will improve the service provided to many landlords and tenants who presently experience frustration in obtaining correct information and advice. It is expected that the creation of a Tenant/Landlord Adviser position would free up Officers to complete their other duties more expeditiously.

5.1 TENANT/LANDLORD ADVISER

RECOMMENDATION 127.

There be appointed a Tenant/Landlord Adviser within the Landlord and Tenant Affairs Branch.

5.2 TENANT ADVOCATE

Concurrently with the above, the Committee considered a proposal by the tenant representatives that the Government fund a tenant advocate position outside the Civil Service. Such a position, tenants argue, is necessary because tenants are no a cohesive group and, for a variety of socio-economic reasons, are unable to obtain easy access to the legal system or to exert group pressure to influence policy and assert their rights. The Committee does not support this proposal, although, the representative of the Manitoba Landlords Association could support paid advocates for both parties.

NO CONSENSUS on the tenants' proposal for a Government supported tenant advocate, outside the Civil Service, responsible to a Board of Directors.

6. REFERENCES ON ADMINISTRATION FOUND ELSEWHERE IN THE REPORT

See Recommendations 5, 13, 14, 17, 18, 19, 20, 21, 22, 33, 36, 37, 40, 41, 59, 61, 66, 68, 90, 92, 98, 105, 121.

LANDLORD AND TENANT REVIEW COMMITTEE
PART V: RESIDENTIAL TENANCIES BOARD/APPEALS

NOTE: The representative of the Manitoba Landlords Association has disassociated himself with the recommendations contained in this section.

1. CURRENT RENT APPEALS SYSTEM

One area of the rent regulation system to receive extensive review by the Committee was the Rent Appeals system (administered by the Coordinator of Appeals, Rent Appeals Branch, Department of Housing).

Under the present Act, the Minister of Housing appoints lay people (approximately 50) to act as Appeals Panelists (Section 8) to hear appeals of Rent Regulation Officers recommendations, compliance matters, and applications for Rehabilitations (Section 9). Panels are composed of people (usually three) selected from the Minister's list by the Coordinator [Section 8(2)].

Panelists work part-time for an honorarium and receive some training. Shortly before hearings, they are briefed by staff and after the hearings they communicate their decision to the Coordinator who notifies the interested parties. Panelists have no formal structured method of meeting together as a group to discuss common concerns.

The present system is a radical departure from the Appeals system under the previous Rent Stabilization Act. That system, while composed of lay people, used a smaller number of "panelists", was independent from the bureaucracy, and had more extensive policy-making powers.

Other jurisdictions in Canada use models which are similar to Manitoba's, but in some cases, the appeal boards are composed of full-time professional civil servants, or full-time Chairpersons, or a tripartite structure.

Various members of the Review Committee expressed concerns about several aspects of the current system: lack of independence; shortage of landlords and tenants on the Minister's list of Panelists; lack of consistency in decisions; the training and quality of Panelists; not giving reasons for decisions; and lack of Appeal to the Courts (other than by way of Certiorari).

2. RESIDENTIAL TENANCIES BOARD

The Committee proposes the establishment of a Residential Tenancies Board to replace the current Rent Appeals Branch. The rationale for the change is to create a more unified adjudicative system to facilitate a fair and speedy resolution of all rental housing related matters, but especially of possessions, evictions and repairs: currently repairs are dealt with by the City, the Rentalsman, and the Small Claims Court while possessions and evictions are handled by Rentalsman's mediation and the Court of Queens Bench.

The Committee recommends that a Board be created which will have comprehensive authority to deal with all landlord/tenant issues: rent appeals and rehabilitation applications which currently fall under the Rent Appeals Panel's domain; orders of possession and claims for losses which are court matters; and the adjudicative powers currently exercised by the Rentalsman.

This amalgamation of judicial and administrative powers into a single institution will result in an improved and more efficient service to landlords and tenants. It is expected that this change will be cost effective as the current Rent Appeals staff could be used while there would be a correspondent saving in those jurisdictions whose case loads are reduced (Small Claims Court and Court of Queens Bench).

Secondly, it is expected that the Board will operate with speed and with informal rules eliminating the necessity for legal representation.

It is hoped that the landlords' concerns over obtaining speedy evictions and damages from delinquent tenants and tenants' concerns about having repairs done in a reasonable time will be answered by this change. Also addressed are concerns held by both parties over the current lack of appeal of Rentalsman's decisions, what are regarded as inconsistent Rent Appeals Panel's decisions, and a lack of landlord and tenant input in the adjudicative process.

The Committee was unable to arrive at consensus as far as the structure of the Board is concerned. The tenant representatives and the representative of the Professional Property Managers Association propose that the Board be comprised of a Chairperson, one or more Vice-Chairpersons, and an equal number of landlord and tenant representatives, the former holding office for terms not exceeding five years and the latter three years.

However, the Coordinator of Appeals and the representative of the Rent Appeals Panelists feel that such a system would be too adversarial and would result in the Chairperson making all the decisions. The latter feels that the Board should be

composed of 12 to 15 people: 1/3 landlord representatives, 1/3 tenant representatives and 1/3 specialists (socio-economic experience). The appointments should be for staggered three year terms except for the Chairperson who should be appointed for a four year term.

Except for the objection to the composition, and the objection of the Professional Property Managers Association's representative to using interest on security deposits to set up a housing fund, the Committee agrees to the substance of the proposed model.

Finally, the Committee studied the constitutional implications of the establishment of a Residential Tenancies Board wielding powers which traditionally are exercised by superior courts. The model being proposed takes into account the various cases that have been decided by the Courts in Canada and is constructed in such a manner that the administrative and non-typically superior court functions far outweigh the judicial functions. The Board should be viewed as a vehicle designed to address the broad social policy issue of the orderly and efficient regulation of the rental housing market. It is designed to be efficient, speedy, equitable, accessible, and comprehensive.

RECOMMENDATION 128.

That a Residential Tenancies Board be created under the auspices of the Department of Housing.

THE RESIDENTIAL TENANCIES BOARD: a detailed model

A. The Board

1. The Board should be called "the Residential Tenancies Board" and should be an independent and autonomous specialist tribunal responsible for the fair and efficient administration and adjudication of responsibilities assigned to it under this Act and any other Act. The Board should operate under the umbrella of and in conjunction with the Department of Housing.

B. Composition and Appointment (Coordinator of Appeals and Rent Appeals Panelist representative disagree with this section)

1. The Board should be comprised of (a) a Chairperson (b) one or more Vice-Chairpersons and (c) as many other members equal in number representative of landlords and tenants respectively as is necessary, all of whom should be appointed by the Lieutenant-Governor-in-Council.

2. The Chairperson and Vice-Chairpersons should hold their offices for terms not exceeding five years.

3. Members who are representative of landlords or tenants should hold their offices for terms not exceeding three years.

4. Before selecting and appointing a Chairperson, the government should consult with representatives of landlords and tenants respecting the appointment.

5. Appointments of members other than the Chairperson should be made from a list compiled by the Chairperson after consultation with representatives of landlords and tenants.

6. Any member of the Board whose term expires or who resigns should be able to be reappointed in the same or another capacity.

7. Members of the Board shall be paid such salary or other remuneration and reasonable expenses as may be fixed at the time of appointment.

8. Members of the Board other than the Chairperson may be appointed to either full-time or part-time terms of office, provided that there is equal representation among full-time and part-time appointments.

9. Members of the Board shall not hear or participate in the decision in any matter in which a member of the Board (a) has a pecuniary or personal interest or (b) has within a period of 12 months prior to the date on which the matter was submitted to the Board, acted as solicitor, counsel, or agent for any of the parties to the matter before the Board.

C. **Annual Report**

1. The Board shall, within six months following the end of each fiscal year, submit to the Assembly, through the Minister, a report on the activities of the Board during the immediately preceding fiscal year and the Minister shall submit the report to the Legislative Assembly within fifteen days, or, if the Assembly is not sitting, within the first fifteen days of the next sitting.

2. The report shall contain an account of the activities and operations of the Board, a summary of significant Board and judicial decisions related to the Board's responsibilities under the Act, the full text of any guidelines, policy statements or interpretation bulletins issued by the Board during the year, and any other matters which the Board deems to be of importance.

D. **Structure of Boards and Panels (Coordinator of Appeals and Rent Appeals Panelist Representative disagree with this section)**

1. The Chairperson is the presiding officer of the Board.

2. The Chairperson may (a) establish panels of the Board to determine matters before the Board; (b) terminate an appointment to the panel; (c) fill any vacancy on a panel; or (d) refer any matter which is before the Board to a panel or any matter which is before a panel to another panel; or (e) do two or more of the things set out in clauses (a) to (d) above.

3. The Chairperson shall designate a Vice-Chairperson to act in place of the Chairperson during the absence of the Chairperson, and while so acting the Vice-Chairperson has the power and authority of the Chairperson.

4. The Chairperson shall preside at meetings of the Board and panels of which the Chairperson is a member, and the appropriate Vice-Chairperson shall preside at meetings of every other panel.

5. A panel of the Board consists of (a) the Chairperson; or (b) a Vice-Chairperson; or (c) the Chairperson or Vice-Chairperson and one or more other members equal in numbers representative of landlords and tenants.

6. The panel has the power and authority of the Board.

7. The Board or a panel of the Board shall not proceed with a matter unless a quorum, which (a) in the case of the Board consists of the Chairperson and two-thirds of representative members in equal numbers; or (b) in the case of a panel, consists of all the members of the panel; is present and remains present throughout the proceedings.

8. The decision of a majority of the members of the Board or a panel present at a meeting or other proceedings is the decision of the Board or panel; and if the votes are equal, the Chairperson of the Board or the presiding member of the panel, as the case may be, has the deciding vote.

E. Practice and Procedure

1. The Board shall determine its own practice and procedure, but shall give all parties an opportunity to present evidence and make representation.

2. In any case where the Board may or is required to hold a hearing in a matter, it may do so by providing the parties with an opportunity to present their evidence and make their representations in writing.

3. When the Board considers it necessary or appropriate to conduct an oral hearing the hearing shall be open to the public except that the Board may hold hearings in camera where the Board is of the opinion that (a) intimate financial or personal matters may be disclosed during the hearing; and (b) the desirability of avoiding disclosure of intimate financial or personal matters outweighs the desirability of adhering to the principle that hearings be open to the public.

4. Where, in the opinion of the Board, a request, application or complaint is without merit or beyond the jurisdiction of the Board, it may dismiss the request, application or complaint at any time.

5. The Board, in its advisory capacity to the Minister, may formulate general policy and procedural guidelines to further the operation of the Act but the Board is not bound by those guidelines in the exercise of its powers or the performance of its duties and functions.

6. In formulating such general policy guidelines the Board may request and receive submissions from any person.

F. Board Powers

1. The Board has in relation to any proceeding before it, power

   (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath or affirmation and to produce such documents and things as the Board deems requisite to the full investigation and consideration of any matter which is before the Board in the proceeding;

   (b) to adjourn or postpone the proceeding from time to time;

   (c) to amend or permit the amendment of any document filed in connection with the proceeding;

   (d) to add a party to the proceedings at any stage of the proceedings;

   (e) to administer oaths and affirmations;

   (f) to receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion the Board sees fit whether admissible in a court of law or not;

   (g) to demand by notice in writing, the production of any books, records, documents, papers, rent rolls, leases and tenancy agreements, or any records relating to rent or to the terms and conditions of any tenancy agreement, either forthwith or at a time, date and place specified in the notice;

(h) to retain, or consult with, or seek the advice of any person or organization as the Board may deem necessary for the furtherance of its efficient operation;

(i) to make such examinations of records and such inquiries as it deems necessary;

(j) to exercise such powers and perform such duties and functions as may be incidental to the powers, duties and functions of the Board and the objects of this or any other Act, including the power to make an order requiring compliance with any decision made in respect of a matter before the Board.

2. The Board has all the like powers, privileges and rights as are conferred upon Commissioners appointed under Part V of The Manitoba Evidence Act.

3. The Chairperson or any Vice-Chairperson of the Board may do anything that the Board may do listed under clauses (a) to (i) above.

4. The Board may authorize any person, including a member of the Board, to do anything the Board may do under clauses (a) to (i) above in order to assist the person to effect a resolution of or to investigate and report on any matter before the Board.

G. Subject of Hearings

1. The Board may conduct a hearing

(a) of its own initiative or at the request of the Minister in respect of any issue, practice or condition affecting the rights and responsibilities of landlords and tenants or the stability or quality of rental accommodation in the province;

(b) upon the application of a landlord or a tenant for a determination of the rights and obligations of either party under a tenancy agreement or under the statute;

(c) at the request of the Director of the Landlord and Tenant Affairs Branch in relation to any mediation or investigation undertaken by the Branch;

(d) upon appeal by either a landlord or a tenant of a recommendation of a Rent Regulation Officer and

(e) upon an application by a landlord for approval of the rehabilitation of the premises.

H. **Determinations by the Board (Professional Property Managers disagree with the housing fund mentioned in (k) and elaborated upon below)**

1. In any proceeding before the Board or on an application in writing to the Board by any person, any landlord or tenant or landlord or tenant organization, or of its own motion, the Board may at any time, decide any question for the purposes of this Act, including, without limiting the generality of the foregoing, any questions concerning

(a) whether or not a rental accommodation is habitable within the meaning of the statute;

(b) if a tenant and a landlord have entered into a tenancy agreement;

(c) whether or not a tenant has abandoned a rental premises and the disposition of personal property of chattels in respect of an abandonment;

(d) whether or not a landlord or a tenant is in violation of their obligations under the Act;

(e) whether a landlord is entitled to regain possession of a rental property pursuant to the statute;

(f) whether or not a tenant is entitled to redirect their rent to the Landlord and Tenant Affairs Branch pursuant to any of the sections of the statute;

(g) the fixing of rents in respect of any residential property;

(h) the refund of rent collected not in accordance with the provisions of the statute;

(i) the fixing of compensation to tenants in relation to terminations pursuant to sections of the statute;

(j) terms and conditions attached to rehabilitation in relation to the treatment of tenants; and

(k) awards of compensation, not exceeding $1000, from the housing fund in relation to a loss by either party, or a reduction in service.

I. The Board and the Courts

1. The Board or a panel of the Board should have exclusive jurisdiction to exercise the powers conferred on it by the Act and to determine all questions of fact or law which arise in any matter before it.

2. The decision of the Board or panel in any matter is final and binding on the parties.

3. The Board or a panel may in respect of any decision, finding or order of the Board rescind, amend, or vary the decision, finding or order on the presentation of new facts or on being satisfied that the decision was given without knowledge or it was based on a mistake as to some material fact.

4. An appeal from the Board lies with the Manitoba Court of Appeal by leave from the court.

5. Applications for leave to appeal must be made within _____ days of the Board's order.

6. In any proceeding before a court the Board has the right to appear as a party with full rights to participate, including the right of appeal, and the Chairperson has the authority to retain or instruct counsel to appear on behalf of the Board.

7. Where the Board or any panel of the Board considers it to be in the interest of the efficient administration of the Act or the promotion of harmonious landlord/tenant relations, the Board or panel may refer any question of law before it for a final determination by the Court of Appeal, and the court shall hear and render a decision on the question within three months of the date of the reference.

8. In any proceeding before any court on which a question arises related to any matter within the jurisdiction of the Board under the Act, the court may refer that question to the Board, which shall hear and render a decision on the question within 60 days of the date of the reference.

J. Enforcement

1. Certified copies of Board orders shall be registered with the Court of Queen's Bench and shall be enforceable as judgements or orders of the court.

2. An application to enforce any order of the Board may be made to the court by and in the name of the Board, by any landlord or tenant, or any other affected person.

3. Upon the hearing of an application by the Board, a landlord or tenant or any other person, the court shall be bound absolutely by the findings of the Board and shall make such order or orders as are necessary to comply with the order of the Board.

3. HOUSING FUND

Tenants made the following proposal for the establishment of a housing fund:

HOUSING FUND

1. Potential Uses

   a. repairs necessary to maintain or restore suites and common areas when landlord fails or neglects to make repairs;

   b. repairs necessary to restore suites and common areas damaged by vacating abusive tenants;

   c. payment of security deposits to tenants where landlord has failed to prove claim and refused/neglected to return deposit;

   d. payment in excess of security to landlords for claims such as extraordinary cleaning charges, abandonment costs, etc.;

   e. other awards of compensation ordered by the Housing Board.

2. Resources

   a. annual license fee payable by landlords. $10.00 per suite would be approximately 88¢ per month. Fee could be completely born by landlords, or all or a portion of fee could be passed on to tenants: by pass-through or built into guideline;

   b. interest earned on tenants' security deposits held in trust by Rentalsman. Could be total amount of interest earned or difference between percentage earned and percentage paid to tenants by regulation.

3. Principles

   a. the fund should be used primarily as an emergency fund; to prevent tenants from being forced out of a suite that has fallen into disrepair and to prevent landlords from having to remove a suite from the market because it has been damaged;

b. monies paid out of the fund should be subject to recovery. Recovery from landlords could be by way of rent redirect. Recovery from tenants could be by way of enforceable judgements.

c. there has to be a practical limitation on awards made from the fund. Emergency restoration monies would be used only to bring a suite up to habitable standards. Cosmetic repairs and large awards resulting from arrears would not come from the fund but be dealt with by regular Board order;

d. both landlords and tenants must contribute to the fund;

e. the fund should not be used to make awards of punitive damages but rather to compensate for a loss. There need not be a finding of guilt or responsibility in order for an award to be made.

NO CONSENSUS on the tenants' proposal for the creation of a housing fund (financed by interest on security deposits and annual license fees) to facilitate repairs, to act as an unsatisfied judgement fund, and to pay compensation.

4. RECOMMENDATIONS CONCERNING THE RENT APPEALS BRANCH MADE PRIOR TO THE RESIDENTIAL TENANCIES BOARD PROPOSAL:

4.1 PANEL STRUCTURE

LANDLORD-TENANT CONSENSUS (All in favour except Coordinator of Appeals and the representative of the Appeals Panelists.)

Appeal Panels should be composed of three people: an independent Chairperson, a landlord representative and a tenant representative [Section 8(2)].

4.2 SELECTION OF PANELISTS

NO CONSENSUS on the proposal that Panels should be selected by the Coordinator of Appeals on a strict rotation basis with reasons being provided when the rotation is not followed [Section 8(2)]. (Tenant representatives and the representative of the Professional Property Managers Association are in favour of the proposal. The remainder of the Committee favours allowing the Coordinator to use his discretion in selecting Panels.)

4.3 LEGAL ADVICE

RECOMMENDATION 129.

On those occasions where counsel is required (for Court) panels should use a legal counsel which is outside the Government.

4.4 PANELS TO DETERMINE

RECOMMENDATION 130.

Panels can determine whether or not something applies under the Act (Section 9).

4.5 FRIVOLOUS APPEALS

NEAR CONSENSUS on the proposal of allowing the Coordinator the discretionary power to dismiss appeals of no substance with the appellant having the right to appeal that decision to an independent body such as the Ombudsman. [All the Committee favour the proposal except the Low Income Tenant Representative who favours the Panel, and not the Coordinator, making decisions on substance or merit (except in cases of technical deficiencies).]

4.6 NATURE OF APPEAL HEARINGS [Section 27(1)]

The appeal or second level review of an Officer's recommendation is currently conducted as a complete rehearing of

the case (de novo). Panels currently have access to the Officer's decision (recommendation), tenant objections, landlord's application, and any correspondence between the Officer and the parties. However, Panels do not see the working papers used by the Officer in arriving at the recommendation.

As the Committee is recommending (Recommendation 18) that Officers provide reasons for their decisions, consideration was given to limiting the appeal format to specific appeals stemming from these reasons. However, the Committee feels that any narrowing of the Appeal would result in a more legalistic technical appeal and would be of little benefit to tenants.

Therefore, the Committee proposes that the Appeal should remain as a complete rehearing with the Panel having access to the Officer's decision with reasons. These changes are expected to decrease the number of appeals of no substance and to increase the quality and consistency of the Panel's decisions. However, the Coordinator of Appeals feels that this will create a perception of prejudgement and justice not being done.

4.7 APPEALS TO BE A REHEARING

NEAR CONSENSUS (All in favour except the Coordinator of Appeals) that the Appeal should remain as a complete rehearing but the Panel should have access to the Officer's written reasons given for the recommendation. (Legislation draftsperson to note that this may require dropping the words "de novo".)

4.8 LIMITATION ON ATTENDING HEARINGS

NO CONSENSUS (All in favour except tenant representatives) on the proposal that parties appearing at hearings, while having the right to be present and accompanied by advisers or to be duly represented, may have the number of their advisers and their participation limited at the discretion of the Panel. The tenant representatives propose that there should be no limitations unless there is a threat to the orderly conduct of the hearing or if the contribution is not relevant to the proceedings [Section 10(2)].

4.9 FAILURE TO APPEAR AT HEARINGS

Concern is expressed by landlords and administrators on the Committee that rules governing non-appearance of appellants should be formulated, as much time and effort is wasted in preparing information for an appeal, calling a Panel and conducting a hearing, only to find that the appellant has neither submitted information nor bothered to appear.

RECOMMENDATION 131.

Failure to appear, or to send a duly authorized representative or to provide documentation may be grounds for the dismissal of the Appeal [Section 10(3)].

NOTE: Legislative draftsperson should tighten up this proposal by further defining the type of documentation required.

4.10 **PENALTIES FOR NOT APPEARING**

NEAR CONSENSUS (All in favour except Manitoba Landlords Association representative) that there should be no penalties for appellants who fail to appear (proposal made by the representative of the Manitoba Landlords Association).

4.11 **PANEL'S DECISIONS [SECTION 10(5)]**

Landlords and tenants are in agreement that Panels should provide reasons for their decisions. The Committee feels that such a practise would end the frustration parties to an appeal currently experience, as a result both from not knowing why a decision was made, but also from inconsistencies in decisions made by different Panels.

Having reasons provided would result in a precedent binding mechanism and would create a process that is fairer to all parties. It would also have the effect of providing guidance to Rent Regulation Officers in their interpretation of discretionary matters.

This proposal will create additional demands on the staff of the Branch (and may result in the need for additional staff) in terms of providing the Panels with precedents, in helping write decisions, and in providing access to all parties to view decisions. Panelists, too, will be required to spend additional time and effort in writing decisions as carelessness could result in court challenges. In the view of the Coordinator of Appeals, written decisions and dissenting opinions will result in more frequent court challenges. He is not in favour of these changes.

The Committee also considered a proposal to allow Panels to rescind or amend their decisions upon being presented with new facts or if their decision was made without knowledge of some material fact or if their decision was based on a mistake of a material fact. The current practise for dealing with errors of fact has been that the administration corrects them. Some members feel that the proposal could help codify that process while the Coordinator of Appeals thinks it will result in utter chaos.

However, some Committee members feel that such a provision would be abused by unsuccessful parties attempting to have their cases reopened, would create too much uncertainty, and, that specifying time periods in which decisions could be changed, would mean that errors discovered after the time period, could not be corrected.

Allowing appeals of panel's decisions to the Courts is recommended, by the Manitoba Landlords Association representative, as a less costly alternative to writs of Certiorari. However, others on the Committee feel that the proposal of allowing Panels to rescind or amend their decisions along with the right of applying to the courts for Certiorari is a better alternative.

4.12 FORM OF PANEL'S ORDERS

RECOMMENDATION 132.

Panel's orders shall include: the findings of fact upon which the decision was based; any conclusions of law made; and reasons for the decision, including any statutory authority upon which the decision was based [Section 10(5)].

4.13 DISSENTING OPINIONS

NEAR CONSENSUS (All in favour except the Coordinator of Appeals) on the proposal that minority panelists may issue written dissenting opinions [Section 10(5)].

4.14 ORDERS TO BE AVAILABLE TO THE PUBLIC

RECOMMENDATION 133.

Appeal Panel orders shall be maintained in the office of the Branch and shall be available for viewing (New Section).

4.15 HONORARIUMS

RECOMMENDATION 134.

The amount of work of Panelists will be increased as a result of the changes proposed. Therefore, the Committee recommends that the amount of the honorariums received by Panelists be reviewed.

4.16 PANEL TO RESCIND OR AMEND A DECISION

NO CONSENSUS (All in favour except Former Director of the Landlord & Tenant Affairs Branch, the Coordinator of Appeals and the Professional Property Managers Association representative) on the proposal that a Panel may, in respect of any decision given in any particular claim, rescind or amend the

decision upon presentation of new facts, or on being satisfied the decision was given without knowledge of, or was based on, a mistake as to some material fact. The following time limits are to be applied: 30 days for rehabilitation decisions, 60 days for rent decisions, and open-ended for compliance decisions. Applications for review are to be heard by one Panel to determine merit and if merit is deemed to exist, it is to be sent to another Panel for review (New Section).

4.17 APPEAL OF PANEL'S ORDER

NEAR CONSENSUS (All in favour except the Manitoba Landlords Association representative) that there be no right to appeal the Panel's decision to the Court except by way of Certiorari (proposal made by the representative of the Manitoba Landlords Association).

LANDLORD AND TENANT REVIEW COMMITTEE

PART VI: OTHER ISSUES

1. PROVINCIAL AND CITY SOCIAL ASSISTANCE

The Committee would like to comment on the policies and practices of the social assistance agencies in the City of Winnipeg and the Province. The Committee recognizes that these agencies have difficulty in finding accommodations for their clients. However, the Committee feels that regardless of these difficulties, social welfare agencies should not pay illegal rents: this occurs as a result of failing to check what the legal rent is with the Rent Regulation Section, or, in the case of Provincial Social Assistance, of not ensuring that proper rent histories are obtained from the landlord.

The Committee also notes that, if it is the practice of these agencies to force their clients to move when the Rent Regulation Section grants an increase which exceeds those agencies' rent subsidy guidelines, then such practices should be changed.

1.1 SOCIAL SERVICE AGENCIES TO ENSURE COMPLIANCE

RECOMMENDATION 135.

The Review Committee very strongly recommends that City and Provincial Social Services, when approving rent for their clients, should ensure that the unit is in compliance with the R.R.R. Act and the L. & T. Act.

1.2 SOCIAL SERVICE NOT TO FORCE CLIENTS TO MOVE

RECOMMENDATION 136.

Recipients of social assistance should not be forced by Social Service Agencies to move if rent increases, granted by the Rent Regulation Section or the Rent Appeals Branch, exceed Social Assistance guidelines.

1.3 PAYMENT OF RENT

Over the course of the review, the representative of the Manitoba Landlords Association frequently assailed the practices and policies of the City of Winnipeg Social Services Department regarding their method of paying rents. While not agreeing with his proposal that welfare agencies should pay arrears, especially after denying a landlord's request for direct payment of the rent, the Committee did agree with him that welfare agencies should pay the rent directly to the landlord when one of their clients has failed to pay the rent for a month or has a history of nonpayment.

Secondly, the Committee agreed with the representative of the Manitoba Landlords Association that the City of Winnipeg's practice of paying the rent directly to the landlord be done in the same manner as the Province (cheques issued prior to

the end of the month so the landlord receives them on the first day of the month and not on the fifth day).

RECOMMENDATION 137.

When a social welfare client has not paid rent for one month or has a history of nonpayment of rent, those agencies should pay the rent directly to the landlord. Such payments should be paid so as to reach the landlord on the first of the month.

1.4 PAYMENT OF ARREARS AND DAMAGES

NO CONSENSUS on the landlords' proposal that Social Services assume responsibility for arrears when rent is not paid direct and for damages exceeding the amount of the security deposit.

2. RENT IN GOVERNMENT ADMINISTERED HOUSING

Landlords took exception to the current public housing management policy of immediately decreasing the amount paid by tenants (25% of income) when their incomes decline but only raising the amount once a year when their incomes increase.

Civil Servants on the Committee noted that reviewing incomes and adjusting housing payments more frequently than once a year would be very time consuming and would require additional staff to administer. They also pointed out that people employed in seasonal work have incomes that fluctuate greatly during the course of the year.

However, in order to deal with flagrant abusers of the system, the Committee recommends that housing payments should rise more than once per year when incomes increase.

RECOMMENDATION 138.

Housing payments made by tenants in Government Housing should increase more than once per year when incomes increase.

NOTE: Legislative Counsel to note that the three month notice provisions for rent increases need not apply and Sections 116(1) and (1.1) should exempt Government Housing.

3. ONE RESIDENTIAL TENANCY ACT

The Committee is of the opinion that combining the two Acts into one will increase the public's ability to understand the Act.

RECOMMENDATION 139.

The Residential Rent Regulation Act and the Landlord and Tenant Act should be combined as separate sections into one Act, the Residential Tenancy Act. This Act should have a preamble indicating its purpose and intent, should be logically sequenced, and should be written in plain language.

APPENDIX A - RECOMMENDATIONS

Part II, Residential Rent Regulation Act

RECOMMENDATION 1.

Section 1, Definitions, should include the following:

(i) Rent:

The definition of rent should be changed to take into account the following decision made regarding Discounts/Promotions (see Recommendation 22): if the terms, conditions, and duration of a discount or coupon are not spelled out in the lease, then the base rent (upon which the next increase is calculated) is to be considered as the actual amount paid by a tenant.

(ii) Apartment Hotels:

A premises shall be defined as an Apartment Hotel when the following conditions exist:

a) where the landlord offers additional services such as maid service, linen, fully equipped kitchens, etc.; and
b) any other restrictions which would prove that exclusive legal possession of the premises is denied the tenant; and,
c) in each case the landlord would have control of the building including ingress and egress (also see Recommendation 2).

(iii) Furniture:

Furniture should remain within the definition of rent (see Recommendation 27).

(iv) Farms:

Residential premises shall be defined to include farms where the use of the farm property is strictly residential and the entire parcel of land is under a single tenancy agreement (see Recommendation 4).

RECOMMENDATION 2.

In order to receive an exemption for an apartment hotel, it must be proved that: the property, or parts thereof, is zoned for use as an Apartment Hotel; that there is a licence to operate as such and that it is so operating; or, that the

operation of a property, or parts thereof, as an Apartment Hotel has been in place for such a period of time as to be generally accepted by the residents as an Apartment Hotel operation pursuant to the definition.

RECOMMENDATION 3.

Limited Dividend projects should remain under C.M.H.C.'s control and be exempt from Provincial controls except as noted in (ii) below and old R.R.A.P.s should continue to be exempt but new R.R.A.P.s should come under Provincial controls.

RECOMMENDATION 4.

When the use of a farm property is strictly residential, and the entire parcel of land is under a single tenancy agreement, it shall be subject to both Acts, regardless of the amount of acreage. This will provide consistency between the two Acts.

RECOMMENDATION 5.

(i) The reporting period for uninsured major capital items be expanded, so that in addition to Regulation 16, the Officer can consider any expenditure under Regulation 16(c,d), that falls outside the reporting period but prior to the date of the rent increase;

(ii) Departmental building inspectors be available to inspect and report forthwith;

(iii) This also applies to situations where substantial improvements were made in the first two years of ownership (see Recommendation 25).

RECOMMENDATION 6.

A mechanism should be created to encourage landlords to promote conservation of water, gas, and electricity by allowing a pass through of capital costs that are not reduced or negated by lower operating costs on the Pass Through system, while ensuring that any increases passed on to tenants are not onerous.

RECOMMENDATION 7.

For buildings with three or less premises, the rent may be increased only to the maximum rent for comparable suites on voluntary vacate.

RECOMMENDATION 8.

For buildings with four or more premises, the rents can be equalized to the maximum rent in the building for comparable suites upon voluntary vacate.

RECOMMENDATION 9.

Termination of a tenancy for cause (where a tenant leaves the premises on an order of eviction or possession or a determination of the Rentalsman under Section 103(9) of the L. and T. Act) is to be considered a voluntary vacate for both Sections 16(2) and 16(4) (see 4.1 and 4.2 above). This does not apply, however, to use and occupancy for one's own or one's relatives' purposes or for rehabilitations not carried through.

RECOMMENDATION 10.

Where the Director, on a complaint from a tenant, or on his/her own initiative, has reason to believe that the voluntary vacate was not voluntary or that the reasons were not satisfied, then Section 29 would apply mutatis mutandis [Section 16(2) & (4)].

RECOMMENDATION 11.

Reference be made in the Regulations to a caution on Cost Pass Through so that proportioning associated with voluntary vacated units or with tenant initiated improvements or something new (Section 3.2) are not passed through twice.

RECOMMENDATION 12.

The wording of Section 17(1) of the R.R.R.A. and Section 116(1) of the L. and T. Act should be the same.

RECOMMENDATION 13.

Incoming tenants, of suites for which a landlord has served notice under Sections 16(2) and (4), shall, in addition to the other requirements of the Notice to New Tenant Form, receive information as to what suite comparability is based upon [Section 17(4)].

RECOMMENDATION 14.

The time period by which landlords must serve the Director with the application for an increase in rent above the Guideline, shall be increased from 14 days to one full rental month [Section 21(1)].

RECOMMENDATION 15.

A rent increase cannot go into effect until the Notice is filed with the Director. When it is filed after the effective date of the increase, then the increase can only go into effect one month after it is filed.

RECOMMENDATION 16.

The Officer may consult with landlords and tenants to obtain additional information and to receive feedback, prior to issuing a recommendation.

RECOMMENDATION 17.

When the physical condition of the building or the quality of work is the issue upon which a recommendation hinges, on-site inspections should be done by Officers or caused to be done by Panelists.

RECOMMENDATION 18.

That Rent Regulation Officers should give their Recommendations in brief form including reasons or explanations.

RECOMMENDATION 19.

Applications should be processed, and recommendations issued by the effective date of the rent increase and when they are not, the Director may authorize an extension and shall notify both parties and provide the reasons for the delay.

RECOMMENDATION 20.

Where a tenant objects to a Guideline or less increase, the Officer shall meet with the parties prior to requiring the landlord to provide full financial information.

RECOMMENDATION 21.

The calculations upon which the guideline is based should be arrived at openly with input from both landlords and tenants.

RECOMMENDATION 22.

When a discount or coupon is offered, and the terms, conditions and duration of the discount are spelled out as part of the lease, then the base rent (upon which the next increase is calculated) is the rent paid plus the amount of the discount. However, if the terms, conditions, and duration are not spelled out in the lease, then the base rent is to be considered as the actual amount paid by the tenant.

RECOMMENDATION 23.

That Section 21(2),(a),(iii) be strengthened by amending it to read, "an Officer shall consider any change material in its effect, to the condition of the building or premises."

RECOMMENDATION 24.

Where there is evidence of a non-arms length relationship between the landlord and his/her contractor, mark-up costs should not be allowed. However, if a landlord submits evidence that he or his non-arms length contractor has completed work on the property, and such evidence documents time and materials, such costs may be allowed for pass through, pursuant to the legislation, as the lesser of the cost actually charged or the materials/labour ratio of the Policy Manual and in accordance with Section 13(1),(n) of the Regulations.

RECOMMENDATION 25.

Where an Officer, upon receipt of an application for a substantial pass through increase within two years of purchase, is of the opinion, that had an application been made under the Act which met the criteria for Rehabilitation, then the Officer shall send it to the Coordinator of Appeals who, if he concurs with the Officer's assessment, shall refer it to a Panel, notwithstanding that the work may have been completed.

RECOMMENDATION 26.

Washers and dryers should remain within the definition of rent in the Act but should be treated in a special manner, unless it is expressly stated in the tenancy agreement that

washers and dryers are not included and the service was not part of the tenancy agreement from Day One.

RECOMMENDATION 27.

(i) the charge associated with, and an itemized list of, all furniture should be identified separately from the base rent in the lease and in all notice forms;

(ii) a condition report for furniture should be mandatory at the start of the lease;

(iii) where furniture is leased, the lease agreement for the furniture should be attached to both the lease and the notice forms;

(iv) where a landlord provides furniture, the monthly cost charged to the tenant shall not exceed the lesser of 1/36 of the purchase price or market value, or, where the furniture is leased, the actual monthly cost of leasing (Section 29 applies mutatis mutandis);

(v) any management fee charged in association with furniture should be part of the overall management fee (5% of the rental charge for furniture plus the rent);

(vi) furniture should remain in the definition of rent in both the R.R.R.A. and the L.T.A.;

(vii) in considering what is reasonable, an Officer shall relate cost to market value;

(viii) notwithstanding the tenancy agreement, a tenant may object to the reasonableness of the amount charged for furniture where there is a non-arms length transaction or where the value of the furniture has been misstated.

RECOMMENDATION 28.

Tenants may object to Guideline or less than Guideline increases for the following reasons:

(i) variations in the rent being charged by the landlord for similar units within the residential complex; or,

(ii) a deterioration in the standard of maintenance or repair that affects the rental unit or the building; or,

(iii) when the increase, if any, in the landlord's operating expenses does not warrant the increase.

RECOMMENDATION 29.

Incoming tenants shall have the right to have the rent equalized under the voluntary vacate provisions reviewed [Section 16(2) and 16(4)], on the basis that the new rent did not meet the comparability requirements of those Sections.

RECOMMENDATION 30.

Tenants may object to the landlord's application for increases in the charges for Washers and Dryers.

RECOMMENDATION 31.

Tenants may object to the reasonableness of the amount charged for furniture where there is a non-arms length transaction or where the value of the furniture has been misstated.

RECOMMENDATION 32.

Section 33(7) should be amended, so a Panel, in hearing an application for exemption under Section 33(6), shall grant an order for exemption "for such a period as has been fixed under subsection (3) or (5)."

RECOMMENDATION 33.

Letters to tenants advising them of the second hearing (upon completion of the Rehabilitation) should be carefully and specifically worded so that they understand that while they are entitled to attend and voice any objections they may have, that if the work has been completed in accordance with the Panel's initial order, the exemption, specified at that time, will be granted.

RECOMMENDATION 34.

Guidelines on the treatment of tenants during Rehabilitation should be spelled out and closely monitored by the Rent Appeals Branch. This is not meant however, to preclude the Rentalsman from acting on his own when violations occur that exceed the Panel's orders.

RECOMMENDATION 35.

In order to ensure that tenants are fully protected, a Rentalsman's Officer should be present at the first Rehabilitation hearing.

RECOMMENDATION 36.

Tenants can give notice of one rental period once an order for Rehabilitation is issued under Section 33(3).

RECOMMENDATION 37.

Current tenants should have the right of first refusal upon completion of Rehabilitation of their own suite or of one tha is comparable.

RECOMMENDATION 38.

When tenants are not treated in the manner spelled out by a Panel, in addition to denying a Rehabilitation application, the Panel should determine the amount of compensation, and order the Landlord to provide it to the tenants.

RECOMMENDATION 39.

Landlords can delegate their authority to apply for Rehabilitation to prospective purchasers.

RECOMMENDATION 40.

Criteria for Rehabilitation (Regulation 23) should be spelled out more specifically.

RECOMMENDATION 41.

Buildings which are vacant, and where the per unit cost of reconstruction (excluding land and superstructure) equals or exceeds 75% of the cost of new construction excluding land and superstructure, should be considered, for purposes of the Act, as new construction. Exemptions for new construction [Section 2(2)] must be approved by a Panel.

RECOMMENDATION 42.

When the Director, etc., makes a written request for information on rents, the parties must respond within ten days from the date of service or such further time as may be allowed [Section 5(1)].

RECOMMENDATION 43.

Penalties, such as rent rollbacks, rebates, moving expenses, etc., should be specified in the Act for harassment of tenants to vacate.

RECOMMENDATION 44.

Discounts used as subterfuges should be added to the prohibitions relating to landlords [Section 35(1)(c)].

RECOMMENDATION 45.

The prohibition relating to landlords impeding, delaying or obstructing Officers, etc. from performing their duties [Section 35(1)(d)] should be applied to tenants as well [Section 35(2)].

RECOMMENDATION 46.

That Section 35(2), Prohibitions Relating to Tenants, should include a clause prohibiting tenants from knowingly disclosing information, gained through the process, for commercial advantage.

RECOMMENDATION 47.

A reference to employees of the Department being subject to Government and Departmental conflict of interest guidelines should be included in the Act.

RECOMMENDATION 48.

Department of Housing conflict of interest guidelines should be changed so that employees of the Rent Appeals Branch/Board should submit to the Coordinator of Appeals/Registrar a list of all rental properties in which they or their immediate families have interests as either landlord, property manager or tenant. Employees of the Landlord and Tenant Affairs Branch should be required to make a similar submission to their Director.

RECOMMENDATION 49.

All Rent Appeal Panelists/Residential Tenancies Board Members should submit to the Coordinator of Appeals/Registrar a list of all the rental properties in which they, or members of

their immediate families, have interests (this policy should be included in the Regulations) as either landlord, property manager or tenant.

RECOMMENDATION 50.

Housekeeping amendments.

RECOMMENDATIONS

Part III, Landlord and Tenant Act

RECOMMENDATION 51.

Security deposits cannot be collected or demanded without completion, by both parties, of a condition report. (It is suggested that this provision be phased in with all new tenancy agreements entered into from the time legislation is passed.)

RECOMMENDATION 52.

Condition reports should be on a form prescribed in the Act.

RECOMMENDATION 53.

The incoming tenant should receive a copy of the condition report immediately, but in any event, it must be completed within five working days. If it is not done, or there is a dispute over its completion, the matter should be referred to the Rentalsman: who may complete the condition report and may call in the security deposit until the dispute is resolved.

RECOMMENDATION 54.

In order to prevent problems from building up, and to make landlords and tenants more responsible, landlords should be encouraged to inspect the premises once a year to update the condition report. [Such inspections should comply with the 24 hour notice provisions of Section 95(1).]

RECOMMENDATION 55.

Disputes over outgoing condition reports should result in the Security Deposit being sent to the Rentalsman and the Rentalsman investigating and mediating the dispute. Failure of a landlord to present and complete a condition report or failure of a tenant to complete an outgoing condition report shall be grounds for losing the right to make a claim against a security deposit. However, either party may call in the Rentalsman to complete a condition report on incoming or outgoing situations.

RECOMMENDATION 56.

Security deposits should be held in trust in Manitoba.

RECOMMENDATION 57.

Extraordinary cleaning expenses that are beyond normal wear and tear should be included in security deposit coverage.

RECOMMENDATION 58.

The Rentalsman should take into account whether or not the condition report was signed or was presented for signing in making a disposition of a landlord's claim against a security deposit under Section 87(1.4).

RECOMMENDATION 59.

In order to promote consistency, guidelines on wear and tear should be written which state the objective criteria (length of occupancy, number of occupants, original condition of the suite, etc.) upon which the subjective determination is made.

RECOMMENDATION 60.

The landlord's right to go to Court to recover claims against a security deposit exceeding the amount arbitrated by the Rentalsman should be clarified.

RECOMMENDATION 61.

Notification of change of ownership, Section 106(b), should be amended so that the notification referred to is done on a government supplied form with one copy going to the Landlord and Tenant Affairs Branch.

RECOMMENDATION 62.

Tenants, upon receiving notice of change of ownership [Section 106(b)], should report any discrepancies about the amount of security deposit to both the new landlord and the Landlord and Tenant Affairs Branch within twenty-one days (any disputes should be reported to the Branch).

RECOMMENDATION 63.

Section 117(3) should be amended to direct the court where to pay the security deposit money (the Rentalsman) and to change the word "may" to "shall" ("the court shall in addition in imposing a fine ..."). Secondly, the word landlord should be substituted for the word owner in Section 106.

RECOMMENDATION 64.

Where a landlord fails to submit a new tenancy agreement [Sections 103(7)(8)], the penalty should be changed from a six month renewal of the tenancy agreement to a renewal (on the same terms and conditions) from the expiry date of the tenancy agreement until such time as three months have passed from when the new tenancy agreement has been submitted.

RECOMMENDATION 65.

Any provision not specified in the prescribed tenancy agreement form, in addition to meeting the requirements of Section 118(2.1), should be consistent with the Residential Rent Regulation Act and also should be reasonable.

RECOMMENDATION 66.

Tenancy agreements may contain specified moving times (similar to hotels) which must be approved by the Rentalsman. (Middle income tenant suggests that these be standardized).

RECOMMENDATION 67.

Section 103(7), Execution of Tenancy Agreement, should reference Section 17(6) of the Rent Regulation Act.

RECOMMENDATION 68.

Landlords are obligated to make the premises available for occupation by the incoming tenant at the beginning of the tenancy.

RECOMMENDATION 69.

Failure of landlord to make the premises available should result in termination and abatement.

RECOMMENDATION 70.

The Committee proposes that criteria be included in the Regulations or in policy guidelines to help determine habitability at the time of occupancy.

RECOMMENDATION 71.

Landlords are obligated to deliver the premises in a state of repair that complies with health and safety standards required by law, to the extent that such standards apply to the habitability of the premises, notwithstanding that a tenant knew of a breach by the landlord at the time of entering into a tenancy agreement.

RECOMMENDATION 72.

The recourse for a failure by the landlord to deliver the premises in a proper state of repair should be:

(i) termination at the tenant's choice.

(ii) abatement of rent - the amount of this abatement is to be added to any charges levied against the outgoing tenant when he/she is responsible for the uninhabitable conditions.

(iii) the landlord shall make the premises habitable forthwith, or in any event, not later than five days from the commencement of the tenancy;

(iv) the landlord should not be guilty of an offence where the outgoing tenant is responsible for the conditions being uninhabitable and the landlord has substantially completed the repairs to the extent they are fit for the purposes intended within five days.

RECOMMENDATION 73.

Landlords are obligated to maintain the premises in a reasonable state of decoration. In determining what is reasonable, the following are to be considered: length of tenure, current states of decoration, normal wear and tear, period since item was last attended to, care and maintenance of the premises by the tenant, and the standard of the condition of the property that existed prior to the alleged cosmetic deterioration.

RECOMMENDATION 74.

Failure to maintain the premises in a reasonable state of decoration should not be an offence under the Act but the determinations may include orders for costs of decoration to be paid by either party or to be split in an equitable manner. In order to enforce determinations, redirection of rents can be ordered. Tenants may withdraw their request and nullify the proceedings before contracts are awarded or work has commenced, only when the adjudicator has determined that he/she was not responsible for decoration being necessary. The failure of a tenant to pay his/her adjudicated share after contracts have been awarded or work has begun shall be grounds for termination (at the landlord's option) and costs shall be recoverable from the security deposit.

RECOMMENDATION 75.

Landlords are obligated to maintain the premises in a state of repair that complies with health, safety, and housing standards required by law.

RECOMMENDATION 76.

A contravention of a health and safety standard required by law, shall be grounds for termination of the tenancy by the non-offending party, if the contravention (as specified in a Health Order) is not rectified in the time period specified in the Order.

RECOMMENDATION 77.

Landlords are obligated to keep in a good, safe and functional state of repair all services for the residential property which are the responsibility of the landlord under the tenancy agreement.

RECOMMENDATION 78.

Landlords are obligated to ensure that tenants have peaceful use of the residential premises (responsibility fulfilled once matter has been turned over to the Rentalsman or the Residential Tenancies Board).

RECOMMENDATION 79.

Landlords are obligated to provide tenants, at the time of entering into a tenancy agreement, a Government supplied brochure, written in plain language, outlining rights and obligations, etc.

RECOMMENDATION 80.

Section 105(1), Providing Name and Address to Tenant, should be amended so that tenants are provided with the name, address, and phone number of the landlord's agent(s) who is(are) responsible for making repairs and collecting rent.

RECOMMENDATION 81.

Landlords are obligated to give tenants a Government supplied brochure on tenant insurance (not necessarily an M.P.I.C. brochure).

RECOMMENDATION 82.

Landlords are obligated to provide tenants with a receipt for rent paid in cash.

RECOMMENDATION 83.

Failure by the landlord to issue a receipt for rent paid in cash, should be an offence under the Act.

RECOMMENDATION 84.

Section 96, Entry During Election Campaigns, be amended to include a reference that election literature must be distributed in such a manner that it does not cause litter.

RECOMMENDATION 85.

Section 97(2), Safety Devices on Premises, should be amended to clearly state that landlords are obligated to install locking devices and doors, and maintain them in working order.

RECOMMENDATION 86.

Section 97(1), Alteration of Locks, should be amended so that entry doors to the building are included under this provision.

RECOMMENDATION 87.

On a tenant initiated request for repair, a form (similar to the Rentalsman's Formal Request for Repair Form) specifying preferred times (a.m. or p.m.) be given to the tenant, and

that when it is completed, the 24 hours notice to enter by the landlord would not be required. However, if landlords do not enter in the preferred times specified by the tenant, he/she must comply with the 24 hours notice provisions.

The remainder of Section 95(1) shall remain unchanged with the exception that the notice times referred to shall be changed to "not more than 2 weeks or less than 24 hours."

RECOMMENDATION 88.

The Committee recommends that Section 84(3) be amended so that postdated cheques cannot be demanded [Section 84(3) should reference 84(4)].

RECOMMENDATION 89.

Landlords are obligated to comply with all notice provisions of the Act.

RECOMMENDATION 90.

Landlords are obligated to return the security deposit in the time and manner specified in the Act.

RECOMMENDATION 91.

Landlords are prohibited from terminating tenancies except for the reasons, and in the manner, specified in the Act.

RECOMMENDATION 92.

Section 98(2)(b), Responsibility of a Tenant, should be amended so that tenants are responsible for repairing damage, where reasonable, to the same standard as existed prior to the damage occurring.

RECOMMENDATION 93.

A contravention of a health and safety standard required by law, through any willful or negligent act or omission by him/herself or others permitted on the premises by the tenant, should be grounds for termination of the tenancy.

RECOMMENDATION 94.

The Committee proposes that breaches of the Criminal Code, regardless of the fact that they may be breaches of the Landlord and Tenant Act, be acted upon by the police. The Minister of Housing should inform the Attorney General of the Committee's concern over lack of police action in landlord-tenant disputes.

RECOMMENDATION 95.

Tenants are obligated to not place the rented property or premises in physical jeopardy.

RECOMMENDATION 96.

Section 98(2)(c), Responsibility of Tenant, should be changed so that tenants should avoid disturbing, not only other persons resident in the building, but also those in the "same complex of buildings". This section should be amended to include the tenant's responsibility for guests, not only in the suite, but also in the building.

RECOMMENDATION 97.

Section 98(4) should be rewritten to take into account Recommendation 49 and to correct the ambiguous wording relating to landlords taking action when residents are disturbed.

RECOMMENDATION 98.

Tenants are responsible for fulfilling any obligations for the provision of services which are the tenant's responsibility under the tenancy agreement.

RECOMMENDATION 99.

Tenants are prohibited from overholding the suite once the tenancy agreement has expired.

RECOMMENDATION 100.

Section 107(1), Compensation When Premises Not Vacated, should be amended to state "that compensation should be based on a per diem basis of the legal monthly rent."

RECOMMENDATION 101.

Tenants are obligated to pay the rent when it is due.

RECOMMENDATION 102.

Section 104(1) be amended so that failure to pay rent on time for three consecutive months without good or sufficient reason should constitute, at the landlord's option, grounds for the termination of the tenancy.

RECOMMENDATION 103.

Tenants are obligated to not unreasonably impede the landlord's ability to show the rented premises to prospective tenants (after notice of termination has been given) or to prospective purchasers between the hours of 9 a.m. and 9 p.m.

RECOMMENDATION 104.

Tenants are obligated to use the premises only for residential purposes unless otherwise stated in the tenancy agreement.

RECOMMENDATION 106.

Failure of a tenant on a month to month tenancy to give notice in writing or on the prescribed form is deemed to be a renewal of the tenancy.

RECOMMENDATION 107.

Externally attached election signs should be prohibited.

RECOMMENDATION 108.

A landlord requiring a suite for reasons of demolition, renovation or own use [Section 103(4)(c),(d),(e) and 113(6)] and in which a school age child resides, notwithstanding the provisions for renewal of tenancy agreements [Section 103(7)(8)], may serve notice for a July-August possession and is not obligated to renew a tenancy agreement for a period beyond that time. [Legislative draftsman to refer to Section 101(9) for example of wording.] (Landlords must still comply with the notice provisions).

RECOMMENDATION 109.

Reports to judges by the Rentalsman under Section 98(6), Nuisance and Disturbance, and Section 110(4), Orders for Possession, should be done in a time period, fixed by the judge, of up to 30 days duration (extensions may be granted upon request).

RECOMMENDATION 110.

Requests for substitutional service should be by direct application to a judge rather than by originating notice of motion.

RECOMMENDATION 111.

The non-arms length sale of a rented property for the sole purpose of terminating a tenancy should be an offence under the Act [inclusion of 113(6), Possession After Sale, under offences of 103(5)].

RECOMMENDATION 112.

Section 113(6), Possession After Sale, should include the following definition of "bona fide":

When there has been an offer, acceptance, and all conditions relating to the sale are completed, and only the formality of registration of documents remains, the sale is essentially complete and, therefore, bona fide.

RECOMMENDATION 113.

Landlords may charge a fee, not exceeding the sum of $20.00, for work actually done (reference checks, paperwork, etc.) in subletting or assigning suites by tenants.

RECOMMENDATION 114.

Application fees to rent suites should be prohibited under the Act.

RECOMMENDATION 115.

Garage door opener fees should be part of the security deposit (not intended to prohibit an additional charge where an additional opener is requested for the rental of the same parking stall).

RECOMMENDATION 116.

Where a tenant wishes to buy out of a lease, he/she can choose, either to make a private arrangement with the landlord, or apply to the Residential Tenancies Board to be allowed to send the remainder of the rent owing on the lease to the Rentalsman monthly who will disburse it to the landlord for the period of time in which the suite remains unrented and return the excess amount to the tenant once the suite is rerented (landlords are obligated to rerent the suite as soon as possible, and the Residential Tenancies Board is obligated to ensure that its order is filed with a Court so as to ensure that the tenant remains liable should he/she default).

RECOMMENDATION 117.

(a) Tenants may sublet the rented premises only when they wish to maintain the right to reclaim possession and with the landlord's consent (which cannot be arbitrarily or unreasonably withheld) but shall remain liable for the fulfillment of all tenant responsibilities for the duration of the tenancy agreement: the prime tenant becomes a sublandlord and may require the subtenant to pay him/her a security deposit and is required to serve the subtenant with one month's notice prior to regaining the rented premises.

(b) Tenants may assign the premises with the landlord's consent (which cannot be arbitrarily or unreasonably withheld) and settle up the security deposit. However,

(i) if the assignment occurs before the three month period prior to the expiry date of the existing tenancy agreement [Section 103(7)], then the period of assignment shall be to the end of the lease unless the landlord and assignee make a private arrangement to end the existing lease and start a new one; or,

(ii) if the assignment occurs during the three month period prior to the expiry date of the existing tenancy agreement, then the period of assignment may be to the end of the lease period or the landlord may require the assignee to accept a new lease for a period of time of one year plus the time remaining on the existing lease. In the event that the prospective tenant declines to accept the landlord's lease, the prime tenant should find a new prospective tenant.

Recommendation 118.

The Act should contain a special section dealing with mobile homes which besides the current provisions (as amended) contains provisions which:

(i) do not restrict a tenant's right to sell, lease or otherwise part with possession of the mobile home;

(ii) allow a tenant to lease the mobile home and sublet the mobile home site subject to the landlord's refusal on reasonable grounds;

(iii) do not restrict the tenant's right to remove the mobile home from the mobile home site/park;

(iv) do not restrict the tenant's right to employ qualified tradespeople to connect services/utilities to the mobile home;

(v) do not restrict the tenant's right to employ qualified tradespeople to install/remove the mobile home;

(vi) do not restrict the tenant's right to purchase goods and services from the person of their choice;

(vii) do not require the tenant to install permanent fixtures on the mobile home site;

(viii) obligate the landlord (in addition to other obligations in the Act) to provide: for snow removal from roads, common areas, and access locations in the park; for garbage removal; for road maintenance; for provision of services that the landlord has undertaken to provide [including those which the landlord provides himself without purchase - amendment to 98(7)];

(ix) obligate the tenant (in addition to other obligations in the Act): to maintain the exterior of the mobile home in a good state of repair and cleanliness (guidelines to be written); to avoid causing a nuisance and disturbance to other residents of the mobile home park; and to maintain the mobile home in such an order that it would not negatively influence other tenants;

(x) allow for a minimum of one month's notice of termination by the landlord for tenant default, and for a minimum of six month's notice for change of use of the park (in turn the tenant may then terminate with one month's notice);

(xi) clarify the rights of landlords to apply to the Residential Tenancies Board/Court for direction in dealing with abandoned mobile homes;

(xii) spell out the role of the Residential Tenancies Board/Rentalsman in settling disputes;

(xiii) clarify situations in which rents are seized by municipalities for unpaid taxes so as to ensure that mobile home owners continue to receive services and are able to remove their homes from the park.

RECOMMENDATION 119.

Long term residents in hotels whose situation meets the requirements of tenancies, should be afforded all the rights and protections of a tenancy.

RECOMMENDATION 120.

When housing is provided as part of training, security of tenure should be conditional upon the duration of training.

PART IV, ADMINISTRATION

RECOMMENDATION 121.

The Officers of the Rentalsman's Section should be reorganized into specialized areas:

(a) Information: to provide information about the Act (law) and about procedures (administration).

(i) Phone Information - general information/no advice.

(ii) Drop-In Information - hours available to the working public (Note: M.G.E.A. issue).

(iii) Paper Information - information bulletins, written in simple language (one sheet per topic); policy and procedures manual available for viewing with xeroxed excerpts; public access to legal opinions.

(iv) Active distribution of information (not reactive).

(v) Referral Information - Officers should be familiar with other agencies and Government Departments so as to make proper referrals when needed.

(b) Investigation: to receive and investigate complaints (or on own initiative) about condition reports, repairs, nuisance and disturbance, withdrawal of services, non-payment of rent, terminations and right to continue

in occupancy, proper service of notice and without limiting the generality of the foregoing, any other such matters relating to the tenancy.

(i) Investigations are to be strictly fact-finding with no attempt being made to either render opinions or to resolve the matter.

(ii) Investigators are to issue proper reports (upon completion of the investigation) to the Director or person designated by the Director and to both parties (reports to the parties should not contain references to other tenants' names).

(iii) The Director (or person designated) shall decide upon the action to be taken: mediation, adjudication, or referral to other agencies.

(iv) The Director shall report any suspected violations of the Criminal Code to the Attorney General's Department.

RECOMMENDATION 122.

The Landlord and Tenant Affairs Branch should be keeping more comprehensive statistical information, ie. number and type of complaints, volume of cases handled by Officers, time taken to resolve problems, etc.

RECOMMENDATION 123.

The Notice of Recommendation Form should include the Officer's reasons for the recommendation, the rent increase applied for, the Guideline, and the percentage of the rent increase.

RECOMMENDATION 124.

The Notice of Hearing Form should include a statement that "failure to appear may result in the dismissal of the Appeal."

RECOMMENDATION 125.

All forms of the Branch should include a reference to, and phone number of, the Tenant/Landlord Adviser.

RECOMMENDATION 126.

An internal systems audit of all procedures of the Landlord and Tenant Affairs Branch should be done within 12 months to ensure a better flow of information to the public, better public service and a more efficient operation.

RECOMMENDATION 127.

There be appointed a Tenant/Landlord Adviser within the Landlord and Tenant Affairs Branch.

PART V, RESIDENTIAL TENANCIES BOARD/APPEALS

RECOMMENDATION 128.

That a Residential Tenancies Board be created under the auspices of the Department of Housing.

RECOMMENDATION 129.

On those occasions where counsel is required (for Court) panels should use a legal counsel which is outside the Government.

RECOMMENDATION 130.

Panels can determine whether or not something applies under the Act (Section 9).

RECOMMENDATION 131.

Failure to appear, or to send a duly authorized representative or to provide documentation may be grounds for the dismissal of the Appeal [Section 10(3)].

RECOMMENDATION 132.

Panel's orders shall include: the findings of fact upon which the decision was based; any conclusions of law made; and reasons for the decision, including any statutory authority upon which the decision was based [Section 10(5)].

RECOMMENDATION 133.

Appeal Panel orders shall be maintained in the office of the Branch and shall be available for viewing (New Section).

RECOMMENDATION 134.

The amount of work of Panelists will be increased as a result of the changes proposed. Therefore, the Committee recommends that the amount of the honorariums received by Panelists be reviewed.

PART VI, OTHER ISSUES

RECOMMENDATION 135.

The Review Committee very strongly recommends that City and Provincial Social Services, when approving rent for their clients, should ensure that the unit is in compliance with the R.R.R. Act and the L. & T. Act.

RECOMMENDATION 136.

Recipients of social assistance should not be forced by Social Service Agencies to move if rent increases, granted by the Rent Regulation Section or the Rent Appeals Branch, exceed Social Assistance guidelines.

RECOMMENDATION 137.

When a social welfare client has not paid rent for one month or has a history of nonpayment of rent, those agencies should pay the rent directly to the landlord. Such payments should be paid so as to reach the landlord on the first of the month.

RECOMMENDATION 138.

Housing payments made by tenants in Government Housing should increase more than once per year when incomes increase.

RECOMMENDATION 139.

The Residential Rent Regulation Act and the Landlord and Tenant Act should be combined as separate sections into one Act, the Residential Tenancy Act. This Act should have a preamble indicating its purpose and intent, should be logically sequenced, and should be written in plain language.

Appendix B

Persons and Organizations that Submitted Briefs to the Committee

The Committee received 56 written submissions: 14 can be classified as tenant submissions, 40 as landlord submissions, and 2 as other. Most of these submissions came from residents of Winnipeg where most rental premises are located. The concerns expressed in the submissions related primarily to the following:

(a) Residential Rent Regulation Act

- voluntary vacate provisions
- administration
- lack of written reasons for decisions
- exemptions
- regulations for pass-through of costs

(b) Landlord and Tenant Act

- security deposits
- possessions and evictions
- Rentalsman's procedures
- Rentalsman's administration
- education and information dissemination

Elizabeth S. Aikenhead

Alexander C. Anderson

Richard N. Blair, Shelter Corporation of Canada Ltd.

Irv Blankstein, 1616 Pembina Holdings Ltd.

C. Brickwood

Ashley Brown, Leon A. Brown Ltd.

Larry Brown, Warren Park Lane Mobile Home Community

Vera L. Brown

Richard Brownscombe, Professional Property Managers Association

Bev Chapman-Park, Brandon Mobile Home Owners Association Inc.

Jules H. Chartier

Caroline B. Cramer, Brotman & Cramer

Phil Eyler

J. Feist

Henry Friesen

E.L. Gagnon, Rent Regulation Officer
M.M. Galpern
Trevor Gloyne, C.M.H.C.
L. Gojporsingh
Doug Gunn, Gunn's Realty
W.P. Harrison, Core Area Residential Upgrading and Maintenance Program
Joan Hazell
Paul Kammerloch, legal counsel for Winnipeg Regional Housing Authority
Gerald T. Kolba
A.M. Kotello
Manitoba Landlords Association
Doug McGregor
Alice B. Mantyko
Stephen Mazur
Dana Nelko, McJannet, Weinberg, Rich
Michael J. Nozick, Fairweather Properties Ltd.
K. Numerow, Numerow Trading Co.
E. Bruce Parker, Aikens, MacAulay, & Thorvaldson
Gustave Painchaud
K.V. Pilon
Ruth Rattai, Kraft Holdings Ltd.
M. Reich, Astroid Management Ltd.
Dr. Peter F. Rowbotham, Cambridgeshire Investments Ltd.
Margret Schroeder
V.J. Sheppard
Gary Simonson, Winnipeg Real Estate Board
John Shillinger, Rent Regulation Officer
Henry Schultz, Henry Schultz Construction Ltd.
Manley Steiman, Rent Appeal Panelist
R. Tester
Merv Thomson, Ten Ten Sinclair Housing Inc.
Charlynn Toews
Urban Resource Centre Inc.
Julie Van de Spiegle

R. Walls
Kent Walters
M. Whiteman
Alice E. Wilson
Valerie J. Wilson
Winnipeg Housing Concerns Group
Gwen Winslow

Appendix C

Rent Regulation Process

1. Tenant receives a Notice of Increase in Rent three months prior to the effective date of that increase.

2. The tenant has the right to object to that increase and in fact has the right to object to any increase in rent, whether it be below or above the guideline; however, must object within one month of receiving the notice.

3. If the increase requested by the landlord is above the guideline, the landlord must provide the Branch with an application to substantiate said increase, within 14 days of issuing the notice to the tenants.

4. If the above procedure is followed, a Rent Regulation Officer will receive the landlord's application and the tenant objections and open a file. He will inform all the tenants involved that the landlord has made such an application and that they have the right to attend the office to review the material submitted by the landlord.

5. When the tenants attend the office, they will have the opportunity to leave a submission should they disagree with or take exception to what is stated in the application, or in general terms, have found the operation of the building lacking in some fashion. eg. one of the most frequent complaints is repair and maintenance, cleaning, etc.

6. After the viewing period, which is two weeks (not necessarily during business hours; if the tenant or landlord has a problem coming down during regular office hours, they can phone and the Bureau will arrange an out-of-hours viewing), the Rent Regulation Officer will take all submissions, that is, from the landlord and the tenants, and review the file, review the financial information submitted in accordance with the legislation, and adjudicate the application in accordance with the Act and Regulations; then issue a recommendation.

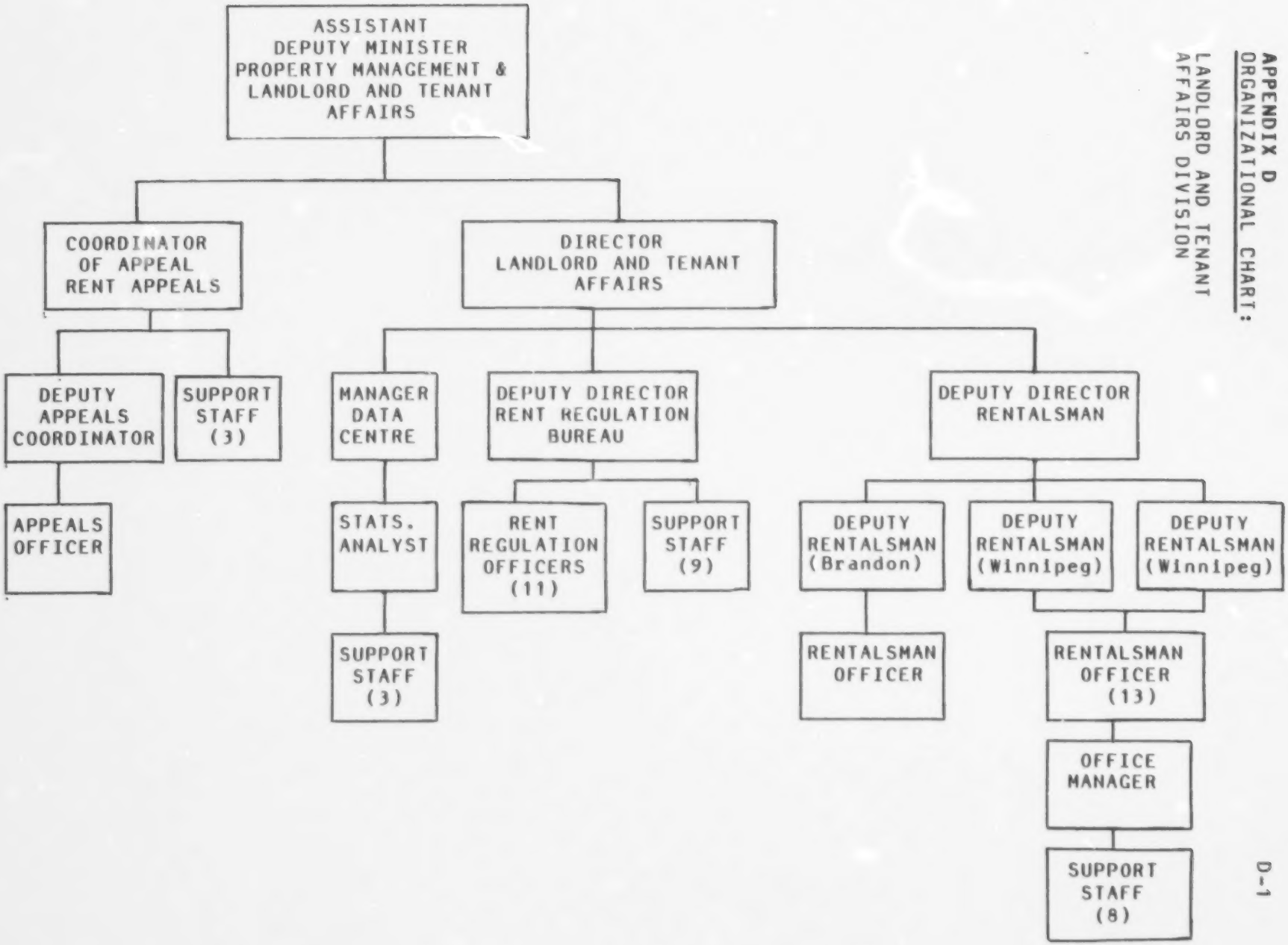
7. Once the recommendation is issued, should the tenant or landlord find it unacceptable, it is appealable within 14 days.

8. Should the tenant or the landlord appeal, then they will receive notification from the Coordinator of Appeals that a date has been set for a hearing into the matter, at which time they may present any evidence they may have or any arguments they may wish to make in favour of or against the recommendation.

9. On the other hand, if the tenant does not appeal and the landlord does not appeal, a letter of confirmation will be issued and the original recommendation issued by the Rent Regulation Officer will become final and binding.

10. As a result of an appeal hearing, the appeal panel will make its decision and issue an appeal order, which is final and binding.

APPENDIX D
ORGANIZATIONAL CHART:
LANDLORD AND TENANT
AFFAIRS DIVISION



APPENDIX E

Manitoba and Winnipeg Rental Housing Market: Statistical Profile

1. Winnipeg Apartment Demolitions (source: City of Winnipeg)

1983	1983	1984	1985	1986
266	82	125	94	87

2. Winnipeg Condominium Registrations (source: C.M.H.C.)

	No.of Conversion Units Registered	No.of New Units Registered	Total Number of Units Registered
1978	664	754	1,418
1979	675	647	1,322
1980	464	144	578
1981	1,871	-	1,871
1982	2,646	-	2,646

3. Winnipeg Vacancy Rate (privately initiated 6 units or more)

	1983		1984		1985		1986	
	April	Oct.	April	Oct.	April	Oct.	April	Oct.
Old City	1.7	1.1	1.2	0.9	1.0	1.1	1.5	2.0
Suburban	1.1	0.7	0.8	0.7	0.8	0.8	0.9	1.3
Total	1.4	0.9	1.0	0.8	0.9	0.9	1.1	1.6

(source: C.M.H.C.)

4. Private Non-Farm Renter Households - Manitoba
(source: 1981 Census)

Family	59,645	(total number of family households=	160,920)
Non-family	61,780	(" " non-family " =	69,960)
Total	121,425		230,880

5. Private Non-Farm Renter Households - Winnipeg
(source: 1981 Census)

Family	41,385	(total number of family households=	150,375)
Non-family	48,110	(" " non-family " =	66,850)
Total	89,495		217,225

6. Winnipeg Rental Universe (source: C.M.H.C.)

Private:	Rows (1978)	4,000
	Semi-detached/duplex (1978)	9,000
	Apartments with 2-5 Units (1978)	4,000
	Apartments more than 6 Units (1985)	49,942
		66,942
Public:	Public Housing - family	3,894
	- elderly	4,814
	Elderly and Infirm	3,880
	L.D. and Co-op	795
		13,383

7. Manitoba Rental Universe
(statscom data - includes rooms in houses)

Singles (1983)	31,012
Multiples (1983)	104,144
Totals	135,156

8. Social Assistance Recipients in Winnipeg 1985
(source: Province of Manitoba)

City (most receive housing allowances)	7,800
Province (some are owners)	12,672
	20,472

9. Renters by Household Type in Manitoba, 1982
(source: C.M.H.C., Housing in Manitoba, 1984)

Family (couple with children)	18.8%
Family (couple without children)	15.9%
Single Parent Family	13.9%
Unattached Individual Living with Others	7.6%
Unattached Individual Living Alone	41.1%

10. Average Income of Renter Households (1982) $17,000
(source: CM.H.C., Housing in Manitoba, 1984)

11. Renters in Core Housing Need (crowding, adequacy, affordability) 1982
(source: C.M.H.C., Housing in Manitoba, 1984)

Elderly Households	28.2%
Non-elderly Unattached Individuals	33.6%
Non-elderly Family Households	40.0%

12. Market Rent Increases, Winnipeg 1977-84
(source: Stats Canada 62-010)

	1978	1979	1980	1981	1982	1983	1984	1985
Annual Average Increase	6.7	4.9	4.5	7.1	9.0	8.4	5.9	5.4

13. Average Rent Levels (Winnipeg Free Press, August 20, 1985)

1 Bedroom	$344.00
2 Bedroom	$447.00
3 Bedroom	$575.00
Bachelor	$236.50
Houses	$587.00
Duplex	$417.00

1983 RENTER DATA: PROPERTY TAX INFORMATION

INCOME CLASS	WINNIPEG			OTHER URBAN*			RURAL			TOTALS
	TENANT < 65	HOMEOWNER/ TENANT <65	TENANT > 65	TENANT < 65	HOMEOWNER/ TENANT <65	TENANT > 65	TENANT < 65	HOMEOWNER/ TENANT <65	TENANT > 65	
0 - $7,500	27,128	310	12,983	4,500	87	2,471	12,311	723	5,179	65,692
7,500 - 14,999	25,375	992	6,816	4,053	272	962	8,833	1,123	1,183	49,609
15,000 - 24,999	23,427	2,135	3,232	3,693	477	368	6,128	921	350	40,731
25,000 - 49,999	10,374	1,724	1,309	2,675	609	106	3,976	694	115	21,562
50,000 +	611	129	204	116	26	19	211	28	13	1,393
	86,915	5,290	24,580	15,117	1,471	3,926	31,459	3,469	6,840	179,067
	116,785			20,514			41,768			

* PORTAGE, BRANDON, FLIN FLON, DAUPHIN, THOMPSON

APPENDIX F

RESIDENTIAL RENT REGULATION ACT

CHAPTER R84

THE RESIDENTIAL RENT REGULATION ACT

CHAPITRE R84

LOI SUR LE CONTRÔLE DU LOYER DES LOCAUX D'HABITATION

CHAPITRE R84

LOI SUR LE CONTRÔLE DU LOYER DES LOCAUX D'HABITATION

(Sanctionnée le 30 juin 1982)

SA MAJESTÉ, conformément à l'avis de l'Assemblée législative du Manitoba, décrète:

Définitions

1 Les définitions suivantes s'appliquent à la présente loi.

"agent de contrôle du loyer" Quiconque est employé par le gouvernement pour exercer les attributions et fonctions confiées par la présente loi à un agent de contrôle du loyer.

"bail" Contrat écrit, verbal ou tacite entre le propriétaire et le locataire, portant occupation de locaux d'habitation.

"coordonnateur des appels" Le coordonnateur des appels, nommé conformément au paragraphe 4(1).

"directeur" Le directeur du Bureau de contrôle du loyer, nommé conformément au paragraphe 3(2).

"jury" Jury d'appel du loyer, constitué en application de la présente loi.

"local d'habitation" S'entend

(i) du local loué et utilisé à des fins d'habitation, y compris les espaces de stationnement, ou

(ii) du terrain loué à titre d'emplacement d'une maison mobile à l'intérieur d'un parc permanent de maisons mobiles, ou d'une maison mobile située dans un parc permanent de maisons mobiles, ou des deux à la fois,

à l'exclusion des locaux à usage commercial ou agricole avec logement et loués en vertu d'un bail unique, sans loyer supplémentaire pour ce logement.

"locataire" S'entend du locataire, de l'occupant, du sous-locataire, de ses ou de leurs ayants droit et représentants légaux.

"loyer" S'entend de toute somme payée ou remise par le locataire, directement ou par personne interposée, en contrepartie de l'occupation du local d'habitation ainsi que les services, privilèges, espaces ou facilités que le propriétaire fournit au locataire ou à son intention, peu importe que des frais distincts soient perçus ou non pour ces derniers.

"ministre" Le membre du Conseil exécutif chargé par le lieutenant gouverneur en conseil de l'application de la présente loi.

CHAPTER R84

THE RESIDENTIAL RENT REGULATION ACT

(Assented to June 30, 1982)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act

"Coordinator of Appeals" means the person appointed under subsection 4(1) as Coordinator of Appeals;

"director" means the person appointed under subsection 3(2) as Director of The Rent Regulation Bureau;

"landlord" includes the owner, or other person permitting occupancy of residential premises and his heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying the residential premises, who is entitled to possession of the residential premises and who attempts to enforce any of the rights of a landlord under a tenancy agreement or under the law, including the right to collect rent;

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

"panel" means a rent appeal panel established under this Act;

"party" where used to refer to a party to an application, objection, appeal or proceeding under this Act that relates to residential premises, means

(i) the landlord of the residential premises at the time the application or objection is made or the appeal or proceeding is initiated and any heir, assigns, personal representative or successor who acquires the right, title or interest of that landlord before the final determination of the application, objection, appeal or proceeding,

(ii) the tenant of the residential premises at the time to which the application, objection, appeal or proceeding relates, and

(iii) any person who the director or the rent regulation officer or the panel considering the application or objection or an appeal relating thereto or before or by whom the proceeding is taken or initiated, determines in his or its absolute discretion should receive notice of the application, objection, appeal or proceeding;

"regulation" means a regulation made under this Act;

"partie" Lorsqu'il s'agit d'une partie à une demande, à une objection, à un appel ou à une procédure visant un local d'habitation, sous le régime de la présente loi:

(i) le propriétaire du local d'habitation au moment où la demande est introduite, l'objection formulée, l'appel interjeté ou la procédure engagée et tout héritier, ayant droit, exécuteur testamentaire ou successeur qui acquiert le droit, titre ou intérêt de ce propriétaire avant la décision portant en dernier ressort sur la demande, l'objection, l'appel ou la procédure;

(ii) le locataire de ce local d'habitation à l'époque faisant l'objet de la demande, de l'objection, de l'appel ou de la procédure, et

(iii) toute personne à laquelle un avis de la demande, de l'objection, de l'appel ou de la procédure devrait être envoyé, selon que le décide, à son entière discrétion, le directeur, l'agent de contrôle du loyer ou le jury qui en est saisi.

"propriétaire" S'entend du propriétaire ou de toute autre personne qui autorise l'occupation d'un local d'habitation, et de ses héritiers, ayants droit, exécuteurs testamentaires et successeurs, ainsi que de toute personne, autre que le locataire occupant le local d'habitation, qui a un droit de possession sur ce local et qui tente de faire exécuter l'un quelconque des droits que le propriétaire tient du bail ou de la loi, dont le droit de percevoir le loyer.

"règlement" Tout règlement d'application de la présente loi.

"terme" S'entend:

(i) d'un mois, ou

(ii) si les intervalles au début ou à la fin desquels le loyer est exigible sont inférieurs à un mois, de la durée de ces intervalles.

L.M. 1982, c. 16, art. 1; Mod. L.M. 1982-83-84, c. 71, art. 1.

Champ d'application

2(1) Sauf disposition contraire de la présente loi, celle-ci s'applique à tous les locaux d'habitation au Manitoba:

a) nonobstant toute convention conclue ou renonciation consentie avant ou après son entrée en vigueur;

b) nonobstant tout litige pendant à propos de locaux d'habitation, de leurs propriétaires et locataires, des baux conclus à leur égard, de l'augmentation de leur loyer, de la validité ou de la force exécutoire de toute procédure,

décision ou sentence relative à ces baux, ou de la fixation ou la modification de leur loyer; et

c) nonobstant tout jugement ou décision d'un tribunal rendu avant l'entrée en vigueur de la présente loi à l'égard de toute procédure se rapportant à l'augmentation ou à la fixation du loyer d'un local d'habitation.

"rent" includes any amount paid or given by or on behalf of a tenant as consideration for occupancy of residential premises and for any service, privilege, accommodation or thing that the landlord provides or grants to or for the tenant whether or not a separate charge is made for the service, privilege, accommodation or thing;

"rental payment period" means

(i) 1 month, or

(ii) where the intervals at the beginning or end of each of which rent is payable for the residential premises are less than 1 month, the length of those intervals;

"rent regulation officer" means any person employed by the government for the purpose of carrying out the duties and functions assigned to a rent regulation officer under this Act;

"residental premises" means

(i) premises including parking accommodation rented and used for residential purposes, or

En. S.M. 1982-83-84, c. 71, s. 1.

(ii) land rented as a site for a mobile home in a permanent mobile home park or a mobile home situated in a permanent mobile home park or both,

but does not include premises occupied for business or farming purposes with living accommodation included and rented under a single tenancy agreement with no separate rent charged therefor;

"tenancy agreement" means an agreement between a landlord and a tenant for possession of residential premises whether written, oral or implied;

"tenant" includes lessee, occupant, sub-tenant, under tenant and his or their assigns and legal representatives.

S.M. 1982, c. 16, s. 1; Am. S.M. 1982-83-84, c. 71, s. 1.

Application of Act.

2(1) Except as otherwise provided in this Act, this Act applies to all residential premises in Manitoba

(a) notwithstanding any agreement or waiver to the contrary entered into or given before or after the coming into force of this Act;

(b) notwithstanding that litigation is pending related to the residential premises, or to the landlords and tenants thereof, or to tenancy agreements in respect thereof, or to any increase in rents therefor, or the validity or enforceability of any proceedings, decisions or awards in respect of the tenancy agreements or the fixing or varying of rents for the residential premises; and

(c) notwithstanding any judgment or decision of a court rendered before the coming into force of this Act, in respect of any proceedings relating to the increase or fixing of rent for the residential premises.

Exemptions

2(2) Sauf les paragraphes 5(1), 5(3), 17(3) et (4) et les articles 6, 36 et 41, la présente loi ne s'applique pas:

a) aux nouveaux locaux d'habitation dont le premier permis d'occupation est délivré le 1er janvier 1978 ou après cette date, pendant les cinq années qui suivent la délivrance de ce premier permis;

b) lorsqu'un jury a autorisé la réfection d'un immeuble aux fins d'application du présent alinéa, aux locaux d'habitation dans cet immeuble ou une partie de celui-ci, comme peut le préciser le jury dans une ordonnance accordant une exemption en vertu du présent alinéa relativement à l'immeuble ou à une partie de celui-ci, pour la période qui peut avoir été fixée en application du paragraphe 33(3) relativement à cet immeuble ou à une partie de celui-ci; ou

c) lorsque aucun permis d'occupation n'a été délivré à l'égard d'un local de l'immeuble ou lorsqu'un permis d'occupation a été délivré après la date où un local de l'immeuble a été occupé pour la première fois par un locataire, aux locaux d'habitation de l'immeuble à l'égard duquel la première occupation desdits locaux par un locataire a eu lieu 1er janvier 1978 ou après cette date, pendant les cinq années suivant la première occupation par un locataire.

Mod. L.M. 1982-83-84, c. 71, art. 2.

Autres exemptions

2(3) La présente loi ne s'applique pas:

a) aux locaux d'habitation situés dans un hôtel ou motel;

b) aux locaux d'habitation servant uniquement d'habitations saisonnières ou d'habitations de vacances;

c) aux locaux d'habitation où le propriétaire prend le locataire en pension; ou

d) aux locaux d'habitation exemptés, ou relevant d'une catégorie de locaux d'habitation qui est exemptée par le règlement de l'application de tout ou partie des dispositions de la présente loi, dans les limites de l'exemption prévue par le règlement.

L.M. 1982, c. 16, art. 2; Mod. L.M. 1982-83-84, c. 71, art. 2.

PARTIE I

ADMINISTRATION

Constitution du Bureau

3(1) Est constitué le Bureau de contrôle du loyer au sein d'un ministère du gouvernement exécutif de la province.

Exemptions.

2(2) This Act, except subsections 5(1), 5(3), 17(3) and 17(4) and sections 6, 36 and 41, does not apply

(a) for a period of 5 years after the date of issue of the first occupancy permit in respect thereof, to new residential premises in respect of which the first occupancy permit was or is issued on or after January 1, 1978; or

(b) where a panel has approved the rehabilitation of a building for the purpose of this clause, to residential premises in the building or a part of the building, as may be specified in an order of a panel granting an exemption under this clause in respect of the building or the part of the building, for such period as may have been fixed under subsection 33(3) in respect of the building or that part of the building; or

(c) where no occupancy permit was issued in respect of any premises in the building or where an occupancy permit was issued after the date on which any premises in the building were first occupied by a tenant, for a period of 5 years after the date of the first occupancy thereof by a tenant, to all residential premises in the building in respect of which the first occupancy by a tenant of any premises in the building occurred on or after January 1, 1978.

Am. S.M. 1982-83-84, c. 71, s. 2.

Further exemptions.

2(3) This Act does not apply

(a) to residential premises that are situated in a hotel or motel; or

(b) to residential premises that are used only on a seasonal basis or only as a vacation residence; or

(c) to residential premises in which the landlord provides both room and board for the tenant in premises which the tenant occupies; or

(d) to residential premises that are exempted or to residential premises of a class that is exempted under the regulations from application of all or part of the provisions of this Act to the extent that the exemption is provided under the regulations.

S.M. 1982, c. 16, s. 2; Am. S.M. 1982-83-84, c. 71, s. 2.

PART I

ADMINISTRATION

Establishment of bureau.

3(1) There shall be established in a department of the executive government of the province a bureau to be known as "The Rent Regulation Bureau".

Nomination du directeur

3(2) Le Bureau est placé sous la direction et le contrôle du ministre qui en nomme le directeur, choisi parmi le personnel du ministère dont relève ce Bureau, et, pour l'application de la présente loi, le directeur du Bureau de contrôle du loyer a la qualité d'agent de contrôle du loyer.

Directeur adjoint

3(3) Le ministre peut nommer, parmi le personnel de ce ministère, un ou plusieurs adjoints au directeur, investis des pouvoirs et responsabilités de ce dernier et habilités à agir à sa place; pour l'application de la présente loi, chaque directeur adjoint a la qualité d'agent de contrôle du loyer.

Responsabilités du directeur

3(4) Le directeur a la responsabilité:

a) d'appliquer la présente loi, sauf en ce qui concerne les responsabilités, fonctions et pouvoirs expressément réservés au coordonnateur des appels;

b) de procéder aux enquêtes qu'il juge nécessaires lorsqu'il a lieu de croire qu'un propriétaire a augmenté ou essaie d'augmenter le loyer en violation de la présente loi, ou perçoit ou essaie de percevoir un loyer qui a été augmenté en violation de la présente loi; et

c) de recueillir et de compiler les informations sur les augmentations de loyer, les niveaux de loyer et toutes autres questions relatives aux loyers, et d'en soumettre le rapport au ministre lorsque celui-ci lui en fait la demande.

L.M. 1982, c. 16, art. 3.

Nomination du coordonnateur des appels

4(1) Le ministre nomme le coordonnateur des appels, choisi parmi le personnel du ministère dont relève le Bureau.

Coordonnateur adjoint des appels

4(2) Le ministre peut nommer, parmi le personnel du ministère dont relève le Bureau, un ou plusieurs adjoints au coordonnateur des appels, investis des pouvoirs et responsabilités de ce dernier et habilités à agir à sa place.

Responsabilités du coordonnateur des appels

4(3) Le coordonnateur des appels a la responsabilité:

a) de sélectionner les jurys et de renvoyer devant ces derniers les appels et autres procédures;

b) de fournir aux jurys le personnel et les installations nécessaires à l'accomplissement de leurs fonctions; et

c) d'enregistrer et de communiquer aux parties les décisions, conclusions et ordonnances des jurys.

L.M. 1982, c. 16, art. 4.

Designation of director.

3(2) The bureau shall be under the direction and control of the minister who shall appoint a person from within the department in which the bureau is established as Director of The Rent Regulation Bureau and for the purposes of this Act the director is a rent regulation officer.

Deputy Director.

3(3) The minister may appoint one or more persons from within the department as deputies to the director and each deputy so appointed has the authority and duties of the director and may act for or in the place of the director and for the purposes of this Act each deputy so appointed is a rent regulation officer.

Responsibilities of director.

3(4) The director is responsible

(a) for the proper administration of this Act other than the duties, functions and authority specifically imposed upon or given to the Coordinator of Appeals;

(b) for the conduct of investigations as he deems necessary where he has reason to believe that a landlord has increased or is attempting to increase rent contrary to this Act or is collecting or attempting to collect rent that has been increased contrary to this Act; and

(c) for obtaining and compiling information in respect of rent increases, rent levels and any other matters affecting rents and the submission of a report thereon to the minister at his request.

S.M. 1982, c. 16, s. 3.

Designation of Coordinator of Appeals.

4(1) The minister shall appoint a person from within the department in which the bureau is established as Coordinator of Appeals.

Deputy Coordinator of Appeals.

4(2) The minister may appoint one or more persons from within the department in which the bureau is established as deputies to the Coordinator of Appeals and each deputy so appointed has the authority and duties of the Coordinator of Appeals and may act for or in the place of the Coordinator of Appeals.

Responsibility of Coordinator of Appeals.

4(3) The Coordinator of Appeals is responsible

(a) for the selection of panels and the referral or assignment of appeals and proceedings to panels;

(b) for the provision of staff and facilities for panels so that they may function properly; and

(c) for the recording and communication to parties of the decisions, determinations and orders by panels.

S.M. 1982, c. 16, s. 4.

Informations en matière de loyers

5(1) Le directeur, toute personne qu'il habilite à cet effet, un agent de contrôle du loyer ou un jury peut demander au propriétaire ou au locataire de lui fournir des informations sur les augmentations de loyer, les niveaux de loyer et toute autre question touchant le loyer de locaux d'habitation, auquel cas le propriétaire ou le locataire doit les lui fournir immédiatement.

Informations destinées aux demandes, etc.

5(2) Dans le cadre des demandes, objections, appels, procédures ou enquêtes qu'autorise la présente loi, le directeur, un jury, toute personne que l'un ou l'autre habilite à cet effet ou un agent de contrôle du loyer, peut consulter, aux heures raisonnables, les documents, dossiers, correspondance, comptes et registres se rapportant directement au local d'habitation visé par la demande, l'objection, l'appel, la procédure ou l'enquête; il peut en tirer des copies ou des extraits.

Ordonnance de production des documents

5(3) Le directeur, un jury, toute personne que l'un ou l'autre autorise à cette fin ou un agent de contrôle du loyer peut demander à un juge de paix de rendre une ordonnance:

a) obligeant un propriétaire ou un locataire à remettre au directeur, au jury ou à l'agent de contrôle du loyer les documents, la correspondance ou les registres relatifs aux locaux d'habitation auxquels la présente loi s'applique, et

b) autorisant le directeur, le jury, toute personne que l'un ou l'autre autorise à cette fin ou l'agent de contrôle du loyer, à en faire des copies ou tirer des extraits.

Le juge paix peut rendre l'ordonnance demandée s'il est convaincu qu'elle est juste et nécessaire à l'application de la présente loi.

Ed. L.M. 1985-86, c. 50, art. 21.

Ed. L.M. 1982, c. 16, art. 5; Mod. L.M. 1985-86, c. 50, art. 21.

Ordonnance permettant l'accès

6 Le directeur, un jury, toute personne que l'un ou l'autre autorise à cette fin ou un agent de contrôle du loyer peut demander à un juge de paix de rendre une ordonnance, l'autorisant à pénétrer dans un local d'habitation visé par une demande, une objection, un appel, une procédure ou une enquête fait sous le régime de la présente loi, ou dans l'immeuble où le bien-fonds dont fait partie ce local d'habitation afin de l'inspecter, de le mesurer ou de le photographier. Le juge de paix peut rendre l'ordonnance demandée s'il est convaincu qu'elle est juste et nécessaire à l'application de la présente loi.

Ed. L.M. 1985-86, c. 50, art. 21.

Information re rents.

5(1) The director or any person authorized by him for the purpose or a rent regulation officer or a panel, may request from a landlord or tenant information relating to rent increases, rent levels and other matters affecting rents for residential premises, and in that case the landlord or tenant, as the case may be, shall provide the information forthwith.

Information for applications, etc.

5(2) For the purposes of an application, objection, appeal, proceeding or investigation under this Act, the director or any person authorized by him for the purpose, or a rent regulation officer, or a panel or a person authorized by a panel for the purpose, shall have access, during reasonable hours, to documents, files, correspondence, accounts and records relevant to the residential premises that are the subject of the application, objection, appeal, proceeding or investigation and may make copies thereof or take extracts therefrom.

Order for delivery of documents, etc.

5(3) The director or any person authorized by the director for the purpose, or a rent regulation officer, or a panel or any person authorized by a panel for the purpose, may apply to a justice for an order

(a) requiring a landlord or tenant to deliver to the director, rent regulation officer or panel, any document, correspondence or record of the landlord or tenant respecting residential premises to which this Act applies; and

(b) authorizing the director or any person authorized by the director for the purpose, or the rent regulation officer, or the panel or any person authorized by the panel for the purpose, to make copies thereof or take extracts therefrom;

and the justice, if satisfied that it is reasonable and necessary for the administration of this Act to grant such an order, may grant the order.

S.M. 1985-86, c. 50, s. 21.

S.M. 1982, c. 16, s. 5; Am. S.M. 1985-86, c. 50, s. 21.

Authority for access.

6 The director or any person authorized by the director for the purpose, or a rent regulation officer, or a panel or any person authorized by a panel for the purpose, may apply to a justice for an order requiring the landlord and any occupant or custodian of residential premises to which an application, objection, appeal, proceeding or investigation under this Act relates, or of the building or property in or on which the residential premises are situated, to permit the director, rent regulation officer, panel or person, as the case may be, to enter the residential premises, building or property for the purpose of conducting an inspection or taking measurements or pictures, and the justice, if satisfied that it is reasonable and necessary for the administration of this Act to grant such an order, may grant the order.

S.M. 1985-86, c. 50, s. 21.

Caractère confidentiel des informations

7(1) Sauf aux fins de rapport au ministre, de poursuite en justice sous le régime de la présente loi, de procédure judiciaire ou d'application de la présente loi, nul n'a le droit:

a) de communiquer sciemment ou de permettre que soit communiquées à qui que ce soit les informations obtenues en application de la présente loi par le directeur, le coordonnateur des appels, un jury ou un agent de contrôle du loyer, directement ou par personne interposée; ou

b) d'autoriser sciemment qui que ce soit à inspecter ou à consulter une copie des documents, dossiers, correspondance, comptes ou registres obtenus en application de la présente loi par le directeur, le coordonnateur des appels, un jury ou un agent de contrôle du loyer, directement ou par personne interposée.

Divulgation des informations

7(2) Le paragraphe (1) n'interdit pas:

a) la communication des informations avec le consentement de la personne qui en fait l'objet;

b) la diffusion ou la publication de l'original ou de la copie de livres, registres, documents, dossiers, correspondance et autres documents, avec le consentement de leur propriétaire; ou

c) la diffusion ou la publication, par le directeur, de documents ou rapports donnant des informations statistiques sans aucune indication de l'identité de tel ou tel locataire ou propriétaire.

L.M. 1982, c. 16, art. 7.

Liste des membres du jury

8(1) Le lieutenant-gouverneur en conseil doit approuver une liste de personnes qu'il juge qualifiées pour siéger comme membres des jurys d'appel du loyer, en application de la présente loi; il peut ajouter des noms à cette liste ou les en radier.

Constitution des jurys

8(2) Le coordonnateur des appels, lorsqu'il le juge nécessaire:

a) nomme à un jury d'appel du loyer, une, trois ou cinq personnes inscrites sur la liste approuvée conformément au paragraphe (1); et

b) en cas de jury constitué de trois ou de cinq personnes, désigne l'une d'entre elles aux fonctions de président du jury, lequel président a droit de vote au même titre que les autres membres du jury.

Rémunération

8(3) Les membres du jury ont droit à la rémunération et au remboursement des dépenses autorisées par le lieutenant-gouverneur en conseil

Information confidential.

7(1) Except for a report to the minister, or for the purposes of a prosecution under this Act, or in any court proceedings, or for the purpose of the administration and enforcement of this Act, no person shall

(a) knowingly communicate, or allow to be communicated, to any person, any information obtained under this Act by or on behalf of the director, the Coordinator of Appeals, a rent regulation officer or a panel; or

(b) knowingly allow any person to inspect, or to have access to, any copy of any document, file, correspondence, account or record obtained under this Act by or on behalf of the director, the Coordinator of Appeals, a rent regulation officer or a panel.

Release of information.

7(2) Subsection (1) does not prohibit

(a) the communication by any person of any information with the consent of the person to whom that information relates; or

(b) the release or publication by any person, with the consent of the owner, of any book, record, document, file, correspondence, or other record, or a copy thereof; or

(c) the release or publication by the director of documents or reports indicating statistical information that does not identify specific tenants or landlords.

S.M. 1982, c. 16, s. 7.

List of panel members.

8(1) The Lieutenant Governor in Council shall approve a list of names of persons to act as members of rent appeal panels for the purposes of this Act and may from time to time add names to the list or strike names from the list.

Appointment of panels.

8(2) From time to time, as the need arises, the Coordinator of Appeals shall

(a) appoint 1, 3, or 5 persons whose names are on the list approved under subsection (1) as members of a rent appeal panel; and

(b) where the panel consists of 3 or 5 persons, designate one of the persons appointed as presiding member of the panel, and the person so designated shall vote equally with the other members.

Remuneration of panel members.

8(3) The members of a panel may be paid such remuneration and expenses as may be authorized by the Lieutenant Governor in Council.

Serment des membres du jury

8(4) Toute personne dont le nom est inscrit sur la liste approuvée conformément au paragraphe (1) doit, avant d'être nommée à un jury, prêter serment ou faire une déclaration solennelle, et y apposer sa signature devant une personne autorisée à recevoir les serments et les déclarations solennelles devant servir dans la province, et présenter au directeur ces documents pour dépôt, selon la formule suivante:

Je, , jure solennellement (ou affirme) que je remplirai avec fidélité, loyauté et impartialité, et au meilleur de ma connaissance, de mon habileté et de ma capacité, les devoirs de membre de tout jury auquel je peux être nommé en vertu de l'article 8 de la Loi sur le contrôle du loyer des locaux d'habitation. Que Dieu me soit en aide. (Omettre les six derniers mots lorsque la personne fait une déclaration solennelle).

L.M. 1982, c. 16, art. 8.

Fonctions du jury

9 Tout jury connaît des matières suivantes sur lesquelles il statue par ordonnance écrite après audition:

a) les appels formés contre les recommandations des agents de contrôle du loyer en matière:

(i) d'objections faites par les locataires aux augmentations de loyer, ou

(ii) de demandes, faites par les propriétaires, d'approbation d'augmentations de loyer supérieures aux limites réglementaires;

b) les demandes faites en vertu des articles 29 ou 30; et

c) les demandes d'autorisation de réfection de locaux d'habitation, renvoyées devant le jury par le coordonnateur des appels et les demandes d'exemptions conformément à l'alinéa 2(2)b).

L.M. 1982, c. 16, art. 9.

Décisions prises à la majorité

10(1) Toute décision se prend à la majorité des membres du jury; faute de majorité, la décision du président prévaut.

Droit d'être présent

10(2) Toute partie à un appel ou à une procédure devant jury a le droit d'être présente aux auditions et de se faire assister de tels conseillers qu'elle estime nécessaires.

Audition par défaut

10(3) Si une partie à l'appel ou à la procédure ne comparaît pas à l'audition, le jury saisi peut procéder à l'audition et statuer en son absence.

Oath of Panel members.

8(4) Each person whose name is on the list approved under subsection (1) shall, before being appointed to a panel, take and subscribe before a person authorized to administer oaths and affirmations for use in the province, and file with the director, an oath or affirmation in the following form:

> I , do solemnly swear (or affirm) that I will faithfully, truly, impartially and to the best of my knowledge, skill and ability, perform the duties of a member of any panel to which I may be appointed under section 8 of The Residential Rent Regulation Act. So help me God. (Omit last 4 words where person affirms).

S.M. 1982, c. 16, s. 8.

Duties of panels.

9 A panel shall consider and after hearings, make written orders, in

(a) appeals from recommendations of rent regulation officers in respect of

(i) objections to rent increases by tenants; or

(ii) applications by landlords for approval of rent increases in excess of the increase permitted under the regulations;

(b) applications under section 29 or 30; and

(c) applications for approval of rehabilitation of residential premises referred to it by the Coordinator of Appeals, and applications for exemption under clause 2(2)(b).

S.M. 1982, c. 16, s. 9.

Majority decisions.

10(1) A decision of a majority of a panel is the decision of the panel but where there is no majority decision, the decision of the presiding member of the panel shall be the decision of the panel.

Right to be present.

10(2) Any party to an appeal or proceeding before a panel is entitled to be present at hearings in respect thereof and to be accompanied by such advisers as he may consider necessary to assist him.

Proceeding in absence of parties.

10(3) Where a party to an appeal or proceeding before a panel fails to attend a hearing in respect thereof, the panel may proceed to hold the hearing and decide the matter.

Ajournement de l'audition

10(4) Le jury peut, lorsqu'il le juge nécessaire, ajourner l'audition de l'appel ou de la procédure dont il est saisi.

Signification de la décision

10(5) Le jury qui, saisi d'un appel ou d'une procédure, rend une décision en application de la présente loi, en donne un avis écrit à toutes les parties.

Ordonnance définitive

10(6) Toute ordonnance du jury est définitive et exécutoire; elle n'est pas susceptible de révision.

Audition à huis clos

10(7) Le jury tient toutes ses auditions à huis clos, à moins que les parties ne consentent à la tenue d'une audience publique.

L.M. 1982, c. 16, art. 10.

Pouvoirs prévus par la Loi sur la preuve

11 Pour l'application de la présente loi, le directeur, un jury ou un agent de contrôle du loyer est investi des pouvoirs d'un commissaire nommé conformément à la Partie V de la Loi sur la preuve au Manitoba et bénéficie de la même protection.

L.M. 1982, c. 16, art. 11.

Témoignages reçus par les agents, etc.

12(1) Le directeur, un jury ou un agent de contrôle du loyer, peut, à son entière discrétion, recevoir les témoignages rendus en la forme qu'il juge indiquée, que ces témoignages soient ou non admissibles en preuve en justice.

Procédure

12(2) Sauf disposition contraire de la présente loi, le directeur, un jury ou un agent de contrôle du loyer peut fixer la procédure à suivre dans l'exercice de ses fonctions.

Charge de la preuve

12(3) Dans toute demande d'augmentation de loyer, toute objection à une augmentation de loyer et tout appel formé contre pareilles demandes ou objections, il incombe au propriétaire de justifier et de fonder l'augmentation qu'il a demandée ou dont il a donné avis au locataire.

Adjournment of hearing.

10(4) A panel may adjourn a hearing in any appeal or proceeding before it from time to time as it deems necessary or advisable.

Notice of decision of panel.

10(5) Where the panel makes a decision in an appeal or proceeding under this Act it shall give written notice of its decision to all parties to the appeal or proceeding.

Order binding.

10(6) Every order of a panel is final, binding and enforceable and not subject to review.

Hearings in camera.

10(7) Unless all parties to a matter present at a hearing in respect of the matter consent to the hearing being open to the public, all hearings in a matter before a panel shall be in camera.

S.M. 1982, c. 16, s. 10.

Powers under Evidence Act.

11 For the purpose of this Act the director, each panel, and each rent regulation officer has the powers and protection of a commissioner appointed under Part V of The Manitoba Evidence Act.

S.M. 1982, c. 16, s. 11.

Evidence before officers, etc.

12(1) The director, a rent regulation officer or a panel may receive and accept evidence in such form as in his or its discretion, he or it may deem fit and proper whether admissable in evidence in a court of law or not.

Procedures.

12(2) Except as otherwise provided in this Act, the director, a rent regulation officer or a panel may determine the procedure to be followed in performing his or its functions.

Onus on application, etc.

12(3) In every application for an increase in rent and every objection to an increase in rent and every appeal arising from such applications and objections, the onus is on the landlord to justify and substantiate the increase in rent for which the landlord has applied or of which the landlord has given notice to the tenant.

Vice de forme

12(4) Une demande introduite, une objection formulée, un appel interjeté ou une procédure engagée sous le régime de la présente loi, ainsi qu'une recommandation, décision ou ordonnance y afférente, n'est pas invalide du seul fait d'un vice de forme, d'une irrégularité de procédure ou d'un manque de formalisme.

Désistement

12(5) L'autorisation de l'agent de contrôle du loyer ou du jury saisi est requise en cas de désistement à l'égard d'une demande introduite, d'une objection formulée ou d'un appel interjeté sous le régime de la présente loi.

Personnes agissant au nom des propriétaires ou des locataires

12(6) Toute personne dûment autorisée par un propriétaire ou un locataire peut, au nom de ce propriétaire ou locataire, présenter une demande ou une objection en vertu de la présente loi ou en appeler de la recommandation d'un agent de contrôle du loyer rendue en vertu de la présente loi.

L.M. 1982, c. 16, art. 12.

Concours des experts, etc.

13 Le ministre peut:

a) retenir les services d'experts, de consultants et de conseillers qu'il juge nécessaires pour permettre au directeur, à un agent de contrôle du loyer ou à un jury de s'acquitter de ses attributions; et

b) autoriser la rémunération des services visés à l'alinéa a).

L.M. 1982, c. 16, art. 13.

Non-exclusion

14 Un membre d'un jury ou un agent de contrôle du loyer n'est pas exclu du seul fait qu'il est:

a) un locataire ou le parent d'un locataire;

b) un propriétaire, le parent d'un propriétaire ou un dirigeant ou administrateur d'une corporation qui est propriétaire;

c) le mandataire d'un locataire ou d'un propriétaire; ou

d) un dirigeant ou membre d'une association de locataires, de propriétaires ou de gérants d'immeubles.

L.M. 1982, c. 16, art. 14.

Lack of form, etc.

12(4) No application, objection, appeal or proceeding under this Act and no recommendation, decision or order in respect thereof, is invalid by reason only of a defect in form, a technical irregularity or lack of formality.

Withdrawal of applications, etc.

12(5) An application, objection or appeal under this Act may be withdrawn with the consent of the rent regulation officer or panel to whom or which the application, objection or appeal has been referred.

Persons acting for landlords or tenants.

12(6) Any person duly authorized by a landlord or a tenant may, for or on behalf of the landlord or tenant, as the case may be, make an application or objection under this Act or appeal a recommendation of a rent regulation officer made under this Act.

S.M. 1982, c. 16, s. 12.

Services of experts, etc.

13 The minister may

(a) obtain the services of such experts, consultants and advisers as in his opinion may be required by the director, a rent regulation officer or a panel in the performance of his or its duties; and

(b) authorize payment for services rendered by persons whose services are obtained under clause (a).

S.M. 1982, c. 16, s. 13.

Officers, etc. not disqualified for certain reasons.

14 A member of a panel is not disqualified from acting as a member of a panel and a rent regulation officer is not disqualified from acting as a rent regulation officer solely

(a) by reason of being a tenant or a relative of a tenant; or

(b) by reason of being a landlord or a relative of a landlord or an officer or director of a corporation that is a landlord; or

(c) by reason of being an agent of a tenant or of a landlord; or

(d) by reason of being an officer or member of an association of tenants, landlords or property managers.

S.M. 1982, c. 16, s. 14.

Rapport

15 Dans les 6 mois qui suivent la fin de chaque année financière du gouvernement, le ministre établit un rapport relativement à l'application de la présente loi au cours de cette année financière, rapport qu'il dépose à l'assemblée si la Législature est en session; dans le cas contraire, il le dépose à l'assemblée dans les 15 jours de l'ouverture de la session suivante de la Législature.

L.M. 1982, c. 16, art. 15.

PARTIE II

AUGMENTATIONS DE LOYER

Fréquence d'augmentation du loyer

16(1) Nonobstant toute stipulation contenue dans un bail mais sous réserve des paragraphes (2) et (7), le loyer d'un local d'habitation ne peut être augmenté avant l'expiration des 12 mois qui suivent la date où l'augmentation précédente du loyer du même local est entrée en vigueur, peu importe qu'un locataire ait occupé le local d'habitation à cette date.

Augmentation suite au délaissement volontaire d'un logement unifamilial, etc

16(2) Lorsque le locataire d'un local d'habitation situé dans un immeuble comprenant au plus 3 locaux d'habitation distincts et à l'égard duquel une déclaration n'est pas enregistrée en vertu de la Loi sur les condominiums :

a) a, de son plein gré, donné au propriétaire un avis de son intention de quitter le local d'habitation; ou

b) meurt et ne laisse aucun conjoint ou personne à charge ayant occupé le local avec lui au moment de sa mort;

nonobstant toute autre disposition de la présente loi et suite à la remise au directeur d'un énoncé de ces faits, prouvé de la manière prévue aux règlements et suite à la reconnaissance de la part du directeur de la réception de cet énoncé et du fondement, à sa satisfaction, des faits allégués soit par ledit énoncé ou par une enquête menée en vertu du paragraphe (3), un propriétaire peut augmenter le loyer du local d'habitation:

c) d'un montant supérieur à l'augmentation réglementaire; ou

d) avant l'expiration des 12 mois qui suivent la date de la dernière augmentation de loyer du local d'habitation; ou

e) de la manière prévue aux alinéas c) et d);

mais lors de la prise de possession du local d'habitation par un autre locataire, le propriétaire doit aviser le directeur:

f) du montant de l'augmentation de loyer du local d'habitation; et

g) de la date d'entrée en vigueur de l'augmentation de loyer, laquelle ne doit pas être antérieure à la date de la prise de possession du local par cet autre locataire.

Mod. L.M. 1982-83-84, c. 71, art. 3.

Report.

15 Within 6 months after the end of each fiscal year of the government, the minister shall prepare a report on the administration of this Act for that fiscal year and table it in the Assembly if the Legislature is then in session and, if the Legislature is not then in session, he shall table it in the Assembly within 15 days of the beginning of the next session of the Legislature.

S.M. 1982, c. 16, s. 15.

PART II

RENT INCREASES

Frequency of rent increase.

16(1) Notwithstanding the terms of any tenancy agreement, the rent payable for residential premises shall not be increased before the expiration of 12 months from the date on which the next previous increase in the rent for the residential premises first came into effect whether or not there was a tenant occupying the residential premises on that date.

Increase on voluntary vacating of single family units, etc.

16(2) Where the tenant of residential premises in a building in respect of which a declaration is not registered under The Condominium Act and in which there are not more than 3 separate residential premises

(a) has voluntarily given notice to the landlord of his intention to vacate the residential premises; or

(b) dies and is not survived by a spouse or dependent who had occupied the premises with the tenant at the time of death of the tenant;

notwithstanding any other provision of this Act, a landlord, upon serving on the director a statement of those facts, substantiated in a manner prescribed in the regulations and receiving acknowledgement from the director of the service of the statement and that the facts have been substantiated to the satisfaction of the director either from the statement or by an investigation undertaken under subsection (3), may increase the rent for the residential premises

(c) by an amount that is greater than the increase in rent permitted under the regulations; or

(d) before the expiration of 12 months from the date of the next previous increase in the rent for the residential premises; or

(e) both by an amount that is greater than the increase in rent permitted under the regulations and before the expiration of 12 months from the date of the next previous increase in the rent for the residential premises;

but upon another tenant taking possession of the residential premises, the landlord shall notify the director

(f) of the amount of the increase in rent for the residential premises; and

(g) the date that the increase in rent took effect which shall not be earlier than the date on which the other tenant takes possession.

Am. S.M. 1982-83-84, c. 71, s. 3.

Enquête par le directeur

16(3) Aux fins de prouver les faits mentionnés aux alinéas 2a) ou b), le directeur peut renvoyer le tout devant un agent de contrôle du loyer afin que ce dernier mène une enquête relativement aux circonstances se rapportant au délaissement du local d'habitation ou relativement aux intérêts de tout conjoint ou personne à charge du locataire décédé; et l'agent de contrôle du loyer envoie au directeur les résultats de son enquête.

Demande d'augmentation des locaux d'habitation vacants

16(4) Lorsque le locataire d'un local d'habitation situé dans un immeuble comprenant plus de trois locaux d'habitation distincts:

a) a, de son plein gré, donné au propriétaire un avis de son intention de quitter le local d'habitation; ou

b) meurt et ne laisse aucun conjoint ou personne à charge ayant occupé le local avec lui au moment de sa mort;

malgré le fait que 12 mois ne se soient pas écoulés suivant la date à laquelle la dernière augmentation de loyer du local d'habitation est entrée en vigueur pour la première fois, le propriétaire peut demander une augmentation de loyer du local d'habitation:

c) d'un montant supérieur à l'augmentation réglementaire; ou

d) avant l'expiration des 12 mois qui suivent la date de la dernière augmentation de loyer du local d'habitation; ou

e) de la manière prévue aux alinéas c) et d);

le propriétaire dépose auprès du directeur une demande d'augmentation du loyer.

Procédure relative à la demande

16(5) Le directeur doit renvoyer une demande en vertu du paragraphe (4) devant un agent de contrôle du loyer qui en dispose de la même manière qu'une demande faite par un propriétaire en vertu de l'article 21, sauf qu'il peut procéder ex parte à l'examen de la demande et sans avis au locataire du local d'habitation.

Augmentation de loyer

16(6) Lorsque, suite à une demande en vertu du paragraphe (4), un agent de contrôle du loyer constate que le loyer du local d'habitation visé par la demande, et qui était payé par le locataire qui a quitté ce local ou qui est décédé, est inférieur à la moyenne des loyers payables pour d'autres locaux d'habitations semblables ou comparables et situés dans le même immeuble, et s'il constate que les conditions d'offre et de demande pour de tels locaux, au moment où le locataire qui a quitté le local ou qui est décédé avait pris possession du local ou avait renouvelé un bail, ne constituaient pas uniquement ou essentiellement la raison pour ce loyer inférieur, l'agent de contrôle du loyer peut recommander par écrit que le propriétaire augmente le loyer du local d'habitation:

Investigation by director.

16(3) For the purpose of substantiating the facts referred to in clause (2)(a) or (b), the director may refer the matter to a rent regulation officer to conduct an investigation as to the circumstances relating to the vacating of the residential premises or the interests of any spouse or dependent of the deceased tenant, as the case may require, and to report the results of the investigation to the director.

Application for increase re vacated premises.

16(4) Where the tenant of residential premises in a building in which there are more than 3 separate residential premises

(a) has voluntarily given notice to the landlord of his intention to vacate the residential premises; or

(b) dies and is not survived by a spouse or dependent who had occupied the premises with the tenant at the time of the death of the tenant;

notwithstanding that 12 months have not expired from the date on which the next previous increase on the rent for the residential premises first came into effect, the landlord may apply for an increase in rent for residential premises

(c) by an amount that is greater than the increase in rent permitted under the regulations; or

(d) before the expiration of 12 months from the date of the next previous increase in the rent for the residential premises; or

(e) both by an amount that is greater than the increase in rent permitted under the regulations and before the expiration of the 12 months from the date of the next previous increase in the rent for the residential premises;

by serving on the director an application for the increase in the rent.

Procedure on application.

16(5) The director shall refer an application under subsection (4) to a rent regulation officer who shall deal with the application in the same manner as an application by a landlord under section 21 except that he may proceed to consider the application ex parte and without notice to any tenant of the residential premises.

Rent increase.

16(6) Where, on an application under subsection (4), a rent regulation officer is satisfied that the rent paid by the vacating or deceased tenant for the residential premises to which the application relates is below the average of rents payable for other similar or comparable residential premises in the same building and that the reason for the low rent was not solely or primarily the conditions of supply and demand for such residential premises at the time the vacating or deceased tenant went into possession or renewed a tenancy agreement, the rent regulation officer may in writing recommend that the landlord may increase the rent for the residential premises

a) d'un montant supérieur à l'augmentation réglementaire; ou

b) avant l'expiration des 12 mois qui suivent la date de la dernière augmentation de loyer du local d'habitation; ou

c) de la manière prévue aux alinéas a) et b);

Pouvoir d'augmentation

16(7) Lorsque, suite à une demande en vertu du paragraphe (4), l'agent de contrôle du loyer fait une recommandation qui est confirmée en vertu du paragraphe 25(3), ou lorsqu'un jury, suite à un appel de la recommandation de l'agent de contrôle du loyer à l'égard d'une demande faite en vertu du paragraphe (4), émet une ordonnance autorisant:

a) le propriétaire à augmenter le loyer du local d'habitation d'un montant supérieur à l'augmentation réglementaire; ou

b) le propriétaire à augmenter le loyer avant l'expiration des 12 mois qui suivent la date de la dernière augmentation de loyer du local d'habitation; ou

c) le propriétaire à augmenter le loyer de la manière prévue aux alinéas a) et b);

le propriétaire, nonobstant toute autre disposition de la présente loi, peut augmenter le loyer du local d'habitation conformément à la recommandation ou à l'ordonnance.

L.M. 1982, c. 16, art. 16; Mod. L.M. 1982-83-84, c. 71, art. 3.

Avis d'augmentation du loyer

17(1) L'avis d'augmentation du loyer d'un local d'habitation doit être signifié par le propriétaire au locataire trois mois au plus tard avant l'entrée en vigueur prévue de l'augmentation; cet avis doit contenir la mention et les renseignements prévus au paragraphe (2) et doit contenir tels renseignements et revêtir telle forme que peut prescrire le règlement.

Renseignements requis

17(2) L'avis d'augmentation du loyer d'un local d'habitation doit:

a) contenir la mention que le locataire a le droit de contester l'augmentation de loyer devant le directeur, dans le mois qui suit la réception de l'avis, peu importe que l'augmentation soit égale ou inférieure à l'augmentation prévue par le règlement;

b) indiquer le montant de l'augmentation;

c) indiquer la valeur proportionnelle de l'augmentation; et

d) indiquer le montant maximum d'augmentation qu'autorise le règlement à l'égard de ce local d'habitation.

(a) by an amount that is greater than the increase in rent permitted under the regulations; or

(b) before the expiration of 12 months from the date of the next previous increase in the rent for the residential premises; or

(c) both by an amount that is greater than the increase in rent permitted under the regulations and before the expiration of 12 months from the date of the next previous increase in the rent for the residential premises.

Authority to increase.

16(7) Where, on an application under subsection (4), the rent regulation officer makes a recommendation which is confirmed under subsection 25(3), or on an appeal from a recommendation of the rent regulation officer respecting an application under subsection (4), a panel issues an order

(a) authorizing the landlord to increase the rent for the residential premises by an amount that is greater than the increase in rent permitted under the regulations; or

(b) authorizing the landlord to increase the rent before the expiration of 12 months from the date of the next previous increase in the rent for the residential premises; or

(c) authorizing the landlord both to increase the rent for the residential premises by an amount that is greater than the increase in rent permitted under the regulations and to increase the rent before the expiration of 12 months from the date of the next previous increase in the rent for the residential premises;

the landlord, notwithstanding any other provision of this Act, may increase the rent for the residential premises in accordance with the recommendation or the order, as the case may be.

S.M. 1982, c. 16, s. 16; Am. S.M. 1982-83-84, c. 71, s. 3.

Notice of increase in rent.

17(1) Every notice of increase in rent for residential premises served by a landlord on a tenant shall be served in writing at least 3 months before the date on which the increase is to be effective and shall contain the statement and information mentioned in subsection (2) and shall also contain such information and be in such form as may be prescribed by the regulations.

Required information in notice of rent increase.

17(2) Every notice of increase in rent for residential premises shall include

(a) a statement that the tenant has the right to object to the increase in rent to the director within 1 month of receiving the notice notwithstanding that the increase is equal to or less than the increase permitted under the regulations;

(b) the dollar amount of the increase;

(c) the percentage amount of the increase; and

(d) the maximum amount of increase permitted under the regulations in respect of the residential premises.

Transmission d'une copie au directeur

17(3) Le propriétaire qui signifie un avis d'augmentation du loyer d'un local d'habitation doit en envoyer une copie au directeur dans les 14 jours de la date de la signification au locataire.

Avis aux nouveaux locataires

17(4) En cas de bail conclu avec un locataire qui n'occupait pas le local d'habitation avant la date de la conclusion du bail, le propriétaire, à la conclusion de ce bail, doit signifier au locataire un avis écrit indiquant:

a) la date où le loyer payable pour ce local d'habitation en vertu du bail est entré en vigueur; et

b) le loyer payable pour le local d'habitation juste avant la date à laquelle ce loyer est entré en vigueur.

Le propriétaire doit envoyer une copie de l'avis au directeur dans les 14 jours de la conclusion du bail.

Durée de l'occupation pendant une demande, etc.

17(5) Nonobstant l'alinéa 103(8)a) de la Loi sur le louage d'immeubles lorsque

a) une demande, une objection ou un appel subséquent qu'autorise la présente loi relativement à un local d'habitation n'est pas réglé définitivement dans un délai de 2 mois avant la date à laquelle une augmentation de loyer du local d'habitation doit entrer en vigueur; et

b) le locataire n'a pas signé le bail que le propriétaire lui a soumis en application du paragraphe 103(7) de la Loi sur le louage d'immeubles;

le locataire n'est pas réputé avoir donné au propriétaire un avis de son intention de mettre fin à sa location le jour de l'expiration du bail actuel et ne perd pas son droit d'occupation du loyer du local d'habitation après l'expiration de ce bail mais si le locataire décide subséquemment de quitter le local d'habitation, il doit fournir au propriétaire un avis de son intention de mettre fin au bail aux moins deux termes avant la date à laquelle il désire mettre fin à cette location.

Signature d'un bail subséquente à une demande

17(6) Lorsque le paragraphe (5) s'applique et qu'un locataire ne signe pas, à l'égard d'un local d'habitation, un bail que le propriétaire lui a soumis en vertu du paragraphe 103(7) de la Loi sur le louage d'immeubles, le locataire doit dans les 14 jours de la décision finale relative à la demande, à l'objection ou à l'appel subséquent qu'autorise la présente loi à l'égard d'un local d'habitation signer le bail avec les changements nécessaires pour que ce dernier soit conforme à la décision relative à la demande, à l'objection ou à l'appel; si le locataire fait défaut de se conformer à ces dispositions, il est réputé avoir donné au propriétaire un avis de son intention de mettre fin à sa location le dernier jour du deuxième terme suivant l'expiration des 14 jours de la décision finale.

L.M. 1982, c. 16, art. 17.

Copy of notice to director.

17(3) Where a landlord serves a notice of increase in rent for any residential premises he shall within 14 days after the date he gives the notice to the tenant send a copy of the notice to the director.

Notice to new tenants.

17(4) Where a landlord enters into a tenancy agreement with a tenant who did not occupy the residential premises before the date that the tenancy agreement was entered into, the landlord shall at the time of entering into the tenancy agreement serve on the tenant a notice in writing stating

(a) the date that the rent payable for the residential premises under the tenancy agreement came into effect; and

(b) the rent payable for the residential premises immediately prior to the date on which that rent came into effect;

and shall, within 14 days after the tenancy agreement is entered into, send a copy of the notice to the director.

Continuation of occupancy pending application, etc.

17(5) Notwithstanding clause 103(8)(a) of The Landlord and Tenant Act, where

(a) an application or objection under this Act relating to residential premises, or an appeal in respect thereof, is not finally determined 2 months before the date on which an increase in rent for the residential premises is to take effect; and

(b) the tenant has not executed the tenancy agreement submitted to him by the landlord under subsection 103(7) of The Landlord and Tenant Act;

the tenant shall not be deemed to have given notice to the landlord of his intention to terminate his tenancy on the expiry date of the existing tenancy agreement and does not lose his right to continue in occupancy of the residential premises after the expiration of the existing tenancy agreement but, where the tenant later determines to vacate the residential premises, he shall serve notice of his intention to terminate the tenancy agreement on the landlord at least 2 rental payment periods before the date on which he wishes to terminate his tenancy.

Execution of tenancy agreement after application, etc.

17(6) Where a tenant does not execute a tenancy agreement in respect of residential premises submitted to him by the landlord under subsection 103(7) of The Landlord and Tenant Act, and subsection (5) applies, the tenant shall, within 14 days after the final determination of the application or objection under this Act relating to the residential premises, or of any appeal in respect thereof, execute the tenancy agreement submitted to him by the landlord with such variations thereto as may be required to comply with the determination of the application or objection, or the appeal in respect thereof, and if the tenant fails to do so, he shall be deemed to have given notice to the landlord of his intention to terminate his tenancy on the last day of the 2nd rental payment period following the expiry of those 14 days.

S.M. 1982, c. 16, s. 17.

Restriction générale

18(1) Sauf décision d'un agent de contrôle du loyer ou ordonnance d'un jury, et sous réserve du paragraphe 28(1), nul propriétaire n'a le droit d'augmenter le loyer d'un local d'habitation durant une année commençant le 1er janvier 1982 ou après cette date, d'un montant supérieur:

a) au montant prévu au règlement applicable aux augmentations de loyer à la date où l'augmentation est exigée; ou

b) au montant calculé selon la formule prévue au règlement applicable aux augmentations de loyer à la date où l'augmentation est exigée.

Définition d''augmentation prévue au règlement'

18(2) Dans la présente loi, "augmentation de loyer prévue au règlement" ou "augmentation réglementaire" s'entend de l'augmentation du loyer d'un montant:

a) prévu au règlement applicable aux augmentations de loyer à la date où l'augmentation est exigée; ou

b) calculé selon la formule prévue au règlement applicable aux augmentations de loyer à la date où l'augmentation est exigée.

Cette expression ne s'entend pas d'une augmentation de loyer autorisée par décision d'un agent de contrôle du loyer ou par ordonnance d'un jury.

L.M. 1982, c. 16, art. 18.

Révision des augmentations antérieures

19(1) Dans le cas où l'augmentation du loyer d'un local d'habitation:

a) entre en vigueur le 1er janvier 1982 ou après cette date, mais avant l'entrée en vigueur de la présente loi; et

b) est supérieure à l'augmentation réglementaire;

peu importe que l'augmentation en question ait été fixée par médiation ou par arbitrage sous le régime de la Loi sur le louage d'immeubles, le propriétaire est tenu, dans le mois qui suit l'entrée en vigueur de la présente loi, de signifier au directeur une demande relativement à cette augmentation du loyer du local d'habitation.

Révision des augmentations en cours

19(2) Dans le cas

a) où, avant l'entrée en vigueur de la présente loi, le propriétaire a signifié au locataire un avis d'augmentation du loyer d'un local d'habitation, devant prendre effet après l'entrée en vigueur de la présente loi; et

b) où l'augmentation envisagée est supérieure à l'augmentation réglementaire;

peu importe que l'augmentation en question ait été fixée par médiation ou par arbitrage sous le régime de la Loi sur le louage d'immeubles, le propriétaire est tenu, dans le mois qui suit l'entrée en vigueur de la présente loi, de signifier au directeur une demande relativement à cette augmentation du loyer du local d'habitation.

General restriction on increases.

18(1) Except in accordance with a decision of a rent regulation officer or an order of a panel and subject to subsection 28(1), no landlord shall increase the rent payable for residential premises during any year commencing on or after January 1, 1982 by more than the amount

(a) that is specified in the regulations that apply to increases in rent at the time the increase is made; or

(b) that is calculated in accordance with the formula specified in the regulations that apply to increases in rent at the time the increase is made.

Meaning of "increase permitted under the regulations".

18(2) Where in this Act or the regulations there is reference to an increase in rent permitted under the regulations, that reference means an increase in the rent by the amount

(a) that is specified in the regulations that apply to increases in rent at the time the increase is made; or

(b) that is calculated in accordance with the formula specified in the regulations that apply to increases in rent at the time the increase is made;

and does not mean or refer to an increase in rent allowed in accordance with a decision of a rent regulation officer or an order of a panel.

S.M. 1982, c. 16, s. 18.

Review of previous increases.

19(1) Where

(a) an increase in rent for residential premises took effect on or after January 1, 1982 but before this Act came into force; and

(b) the increase is in excess of the increase in rent permitted under the regulations;

notwithstanding that the increase may have been determined by mediation or arbitration under The Landlord and Tenant Act, the landlord shall, within 1 month after the coming into force of this Act serve on the director a written application for that increase in the rent for the residential premises.

Review of increase in process.

19(2) Where

(a) before the coming into force of this Act, a landlord gave notice of an increase in rent for residential premises to a tenant to take effect after this Act comes into force; and

(b) the increase is in excess of the increase in rent permitted under the regulations;

notwithstanding that the increase may have been determined by mediation or arbitration under The Landlord and Tenant Act, the landlord shall, within 1 month after the coming into force of this Act serve on the director a written application for that increase in the rent for the residential premises.

Procédure relative à la demande

19(3) En cas de demande introduite en application du présent article, l'augmentation de loyer est fixée conformément à la présente loi. La décision prononcée par l'agent de contrôle du loyer ou l'ordonnance rendue par le jury, selon le cas, en application de la présente loi, prend effet à la date où l'augmentation est ou était initialement exigible et se substitue à tout règlement opéré par sentence arbitrale sous le régime de la Loi sur le louage d'immeubles.

Remboursement du loyer excédentaire

19(4) Lorsqu'il est établi, au cours de la procédure relative à une demande introduite conformément au présent article, que le propriétaire a perçu un loyer supérieur à celui fixé au cours de cette procédure, l'agent de contrôle du loyer, par sa décision, ou le jury, par son ordonnance, ordonne au propriétaire de rembourser au locataire le loyer excédentaire qu'il a payé, de la manière et dans le délai que fixe l'agent de contrôle du loyer ou le jury. L'article 32 s'applique, avec les adaptations nécessaires, à l'exécution de toute décision de l'agent de contrôle du loyer ou ordonnance du jury portant remboursement en application du présent article, tout comme s'il s'agissait d'une ordonnance rendue par le jury en application de l'article 28.

L.M. 1982, c. 16, art. 19.

Objection du locataire à l'augmentation de loyer

20(1) Dans le mois qui suit la réception de l'avis d'augmentation de loyer de la part du propriétaire, le locataire peut, lors même que l'augmentation n'est pas supérieure à l'augmentation réglementaire et que le locataire a signé un bail que le propriétaire lui a soumis en vertu du paragraphe 103(7) de la Loi sur le louage d'immeubles, contester cette augmentation par la signification au directeur, dans un délai d'un mois de la réception de l'avis, d'une objection accompagnée de l'information prescrite par le règlement.

Objection à une augmentation en cours

20(2) Le locataire qui, avant l'entrée en vigueur de la présente loi, a reçu de la part du propriétaire un avis d'augmentation de loyer devant prendre effet le 1er janvier ou après cette date peut, dans le mois qui suit l'entrée en vigueur de la présente loi, contester l'augmentation par la signification au directeur d'une objection accompagnée de l'information prescrite au règlement, lors même que cette augmentation n'est pas supérieure à l'augmentation réglementaire.

Procédure relative à l'objection

20(3) L'objection à une augmentation de loyer, signifiée par un locataire conformément au présent article, est instruite et tranchée selon la même procédure que la demande faite par un propriétaire relativement à une augmentation de loyer supérieure au montant d'augmentation réglementaire.

L.M. 1982, c. 16, art. 20.

Proceedings on application.

19(3) On an application under this section, the increase in rent shall be determined in accordance with this Act and the decision of the rent regulation officer or the order of a panel, as the case may be, under this Act shall take effect as of the date on which the increase is or was first payable and shall supercede any award on a mediation or arbitration under The Landlord and Tenant Act.

Refund of excess rent.

19(4) Where it is determined in proceedings in respect of an application under this section that a landlord has collected rent in excess of that determined in the proceedings, the decision of the rent regulation officer or the order of the panel shall require the landlord to refund the excess rent to the tenant who paid it in a manner and within the time period determined by the rent regulation officer or the panel and section 32 applies, mutatis mutandis, to the enforcement of any decision of the rent regulation officer or order of the panel made under this section in respect of the refund as though it were an order of a panel made under section 29.

S.M. 1982, c. 16, s. 19.

Tenant's objection to rent increase.

20(1) Where a tenant receives a notice of an increase in rent from a landlord, notwithstanding that the increase does not exceed the amount of increase in rent permitted under the regulations and notwithstanding that the tenant has signed a tenancy agreement submitted to him by the landlord under subsection 103(7) of The Landlord and Tenant Act, the tenant may object to the increase by serving an objection with the information prescribed in the regulations on the director within 1 month of receiving the notice.

Tenant's objection to increase in process.

20(2) Where before the coming into force of this Act, a tenant received a notice of an increase in rent from a landlord to take effect on or after January 1, 1982 and either before or after the coming into force of this Act, notwithstanding that the increase does not exceed the amount of increase in rent permitted under the regulations, the tenant may object to the increase by serving an objection with the information prescribed in the regulations on the director within 1 month after the coming into force of this Act.

Procedure on objection.

20(3) An objection to an increase in rent that has been served by a tenant under this section shall be dealt with and decided in the same manner as an application by a landlord for an increase of rent that exceeds the amount of increase permitted under the regulations.

S.M. 1982, c. 16, s. 20.

Demande d'augmentation supplémentaire

21(1) Lorsque

a) le propriétaire, en application du paragraphe 17(1), signifie au locataire d'un local d'habitation un avis d'une augmentation de loyer supérieure à l'augmentation réglementaire, il doit, dans les 14 jours de la signification de l'augmentation; ou lorsque

b) le propriétaire a l'intention d'augmenter le loyer d'un local d'habitation d'un montant supérieur à l'augmentation réglementaire et que l'alinéa a) ne s'applique pas, il doit, au moins deux mois avant l'entrée en vigueur de l'augmentation de loyer;

signifier au directeur une demande relativement à l'augmentation de loyer de ce local du montant indiqué sur l'avis ou la demande, laquelle demande sera renvoyée par le directeur devant un agent de contrôle du loyer.

Instruction par l'agent de contrôle du loyer

21(2) Dans l'instruction d'une demande ou d'une objection présentée conformément à la présente loi, l'agent de contrôle du loyer:

a) doit tenir compte:

(i) du loyer perçu pour le local d'habitation juste avant l'entrée en vigueur effective ou envisagée de l'augmentation visée par la demande ou par l'objection,

(ii) de l'augmentation des frais effectivement subie par le propriétaire, selon la définition et la méthode de calcul prévues au règlement,

(iii) de tout changement intervenu dans les services fournis au locataire ou mis à sa disposition, dans les commodités et les biens se rattachant au local d'habitation, et dans leur valeur, et

(iv) de toutes autres questions dont l'examen est requis par le règlement;

b) peut tenir compte du loyer perçu pour le local d'habitation au cours des deux années qui précèdent la date de la demande, des augmentations de loyer imposées et des augmentations de frais effectivement subies par le propriétaire durant la même période, ces frais étant définis par le règlement et calculés conformément au règlement;

c) doit tenir compte de toute pièce, preuve ou information présentée, relative à la demande ou à l'objection; et

d) doit tenir compte de toutes autres questions qu'il juge nécessaires ou indiquées pour l'instruction de la demande ou de l'objection.

Application by landlord for extra increase.

21(1) Where

(a) a landlord serves notice under subsection 17(1) to a tenant of residential premises of an increase in rent that is greater than the increase in rent permitted under the regulations the landlord, not later than 14 days after giving the notice of the increase in rent; or

(b) a landlord intends to increase the rent for residential premises by an amount that is greater than the increase in rent permitted under the regulations and clause (a) does not apply, the landlord, at least 2 months before the increase in rent is to become effective;

shall serve on the director, a written application to increase the rent for the residential premises by the amount indicated in the notice or application and the director shall refer the application to a rent regulation officer.

Consideration by rent regulation officer.

21(2) In dealing with an application or objection under this Act, a rent regulation officer

(a) shall consider

(i) the rent for the residential premises that was in effect immediately before the increase in rent to which the application or objection relates took effect or is to take effect,

(ii) the increases in the actual expenses incurred by the landlord, as defined in the regulations and determined as prescribed in the regulations,

(iii) any change in the services provided or available for the tenant or in the amenities and properties associated with the residential premises and the value thereof, and

(iv) any other matters required under the regulations to be considered;

(b) may consider the rent payable for the residential premises during the 2 years before the date of the application, the amounts by which that rent was increased during those 2 years and the increases in the actual expenses incurred by the landlord during those 2 years, as defined in the regulations and determined as prescribed in the regulations; and

(c) shall consider any material, evidence or information submitted relative to the application or objection; and

(d) shall consider such other matters as he deems necessary or advisable for the purpose of dealing with the application or objection.

Application aux autres locaux d'habitation dans le même immeuble

21(3) En cas de demande ou d'objection faite conformément à la présente loi à l'égard du loyer d'un local d'habitation situé dans un immeuble ou un complexe immobilier comportant plusieurs locaux d'habitation, l'agent de contrôle du loyer peut, avec l'approbation du directeur et sans recevoir d'autres demandes ou objections, joindre aux procédures relatives à la demande ou à l'objection la question du loyer payable pour l'ensemble ou l'un quelconque des autres locaux d'habitation situés dans le même immeuble ou complexe immobilier, auquel cas:

a) il doit constituer tous les locataires de ces autres locaux d'habitation parties à la demande ou à l'objection, et envoyer à ces locataires et au propriétaire un avis de la demande ou de l'objection et de l'extension de la procédure, en conformité avec le paragraphe 24(1); et

b) il peut, à son entière discrétion, faire une recommandation qui s'applique uniformément ou individuellement aux loyers payables pour la totalité ou une partie de ces autres locaux d'habitation situés dans le même immeuble ou complexe immobilier.

L.M. 1982, c. 16, art. 21.

Recommandation faisant suite à une demande

22(1) En cas de demande ou d'objection faite conformément à la présente loi, l'agent de contrôle du loyer recommande par écrit l'augmentation de loyer applicable au local d'habitation visé par la demande ou par l'objection, laquelle augmentation peut être inférieure à l'augmentation réglementaire.

Recommandation applicable aux autres locaux

22(2) L'agent de contrôle du loyer qui, en vertu de la présente loi, fait une recommandation applicable à plusieurs locaux d'habitation situés dans un même immeuble ou complexe immobilier, peut recommander que le loyer payable pour la totalité ou une partie de ces locaux soit rajusté:

a) dans la même proportion;

b) du même montant;

c) de façon à assurer la parité avec les locaux d'habitation similaires, situés dans l'immeuble ou le complexe immobilier; ou

d) de façon à réduire les différences entre les loyers payables pour les locaux d'habitation similaires, situés dans l'immeuble ou le complexe immobilier.

dans tous les cas, les rajustements recommandés et le total des augmentations de loyer autorisées ne doivent pas être supérieurs aux montants fixés conformément au règlement. Tout rajustement du loyer des locaux d'habitation, déterminé par l'agent de contrôle du loyer, entre en vigueur le jour où le propriétaire peut légalement augmenter le loyer de ces locaux; auquel cas ni le propriétaire ni les locataires ne sont autorisés à faire une demande ou une objection à cet égard.

L.M. 1982, c. 16, art. 22.

Treatment of other premises in same building.

21(3) In dealing with an application or objection under this Act in respect of rent payable for residential premises in a building or in a complex of buildings in which there are other residential premises, a rent regulation officer may, with the approval of the director, and without receiving further submissions, applications or objections join in the proceedings on the application or objection the matters of rents payable for all or any of the other residential premises in the same building or in the same complex of buildings, and where he does,

(a) he shall add all the tenants of those residential premises as parties to the application or objection and send them and the landlord notices of the application or objection and of the expanded nature of the proceedings as required under subsection 24(1); and

(b) he may in his absolute discretion make a recommendation which applies uniformly or severally to rents payable for all or any of those other residential premises in the building or in the complex of buildings, as the case may be.

S.M. 1982, c. 16, s. 21.

Recommendation on application.

22(1) Where an application or objection is made under this Act, the rent regulation officer shall in writing recommend the rent increase to be payable for the residential premises affected by the application or objection which may be less than the increase permitted under the regulations.

Recommendation affecting other premises.

22(2) Where a rent regulation officer makes a recommendation under this Act, which applies to 2 or more residential premises in a building or complex of buildings, he may recommend that rents payable for all or any of those residential premises be adjusted

(a) by an equal percentage; or

(b) by an equal dollar amount; or

(c) by amounts which equalize the rent payable for similar residential premises in the building or in the complex of buildings; or

(d) by amounts which reduce the differences in rents payable for similar residential premises in the building or in the complex of buildings;

but in any case the adjustments recommended and the total of the increases in rent allowed thereby shall not exceed amounts determined in accordance with the regulations and any adjustment in rent for the residential premises shall become effective as determined by the rent regulation officer on an occasion when the rent for those residential premises may lawfully be increased by the landlord and neither the landlord nor the tenants of those residential premises may make applications or objections upon the adjusted rents coming into effect.

S.M. 1982, c. 16, s. 22.

Documents à l'appui de la demande

23(1) Dans le cas où une demande ou objection portant sur un local d'habitation est renvoyée devant un agent de contrôle du loyer en application de la présente loi, le propriétaire produit tels documents se rapportant à la demande ou à l'objection que peut requérir le règlement ou l'agent de contrôle du loyer, dans le délai fixé par celui-ci; les autres parties peuvent produire tels autres documents qu'elles estiment indiqués et pertinents dans tout délai supplémentaire que peut fixer l'agent de contrôle du loyer.

Jonction des demandes et objections

23(2) En cas de réception de deux demandes ou plus, ou de deux objections ou plus, portant sur le même local d'habitation ou sur des locaux d'habitation situés dans le même immeuble ou complexe immobilier, le directeur peut les joindre en une cause unique et les renvoyer comme un tout devant le même agent de contrôle du loyer, auquel cas les demandes et objections sont subséquemment et à toute fin que de droit, jointes et instruites à titre de cause unique.

Demandes futiles, etc.

23(3) Lorsqu'un agent de contrôle du loyer conclut, suite à la production de documents en application du paragraphe (1), qu'une demande ou une objection est sans fondement ou futile, il peut, avec l'approbation du directeur, recommander que la demande soit refusée ou que l'objection soit rejetée.

L.M. 1982, c. 16, art. 23.

Notification de la demande aux parties

24(1) Saisi d'une demande ou d'une objection faite en application de la présente loi, l'agent de contrôle du loyer n'est pas tenu de procéder à l'audition de l'affaire sous quelque forme que ce soit, mais il doit envoyer aux parties un avis indiquant:

a) que la demande a été faite ou l'objection déposée;

b) que, dans les 10 jours de l'envoi de l'avis ou dans tout autre délai qu'il peut fixer, toute partie peut, durant les heures normales d'ouverture, consulter les documents produits à l'égard de la demande ou de l'objection et qui sont sous la garde de l'agent de contrôle du loyer; et

c) que, dans les 10 jours de l'envoi de l'avis ou dans tout autre délai qu'il peut fixer, les parties peuvent lui soumettre leurs observations écrites sur les points litigieux.

Notification de la recommandation

24(2) L'agent de contrôle du loyer envoie aux parties la copie de sa recommandation relative à toute demande faite ou objection déposée en application de la présente loi.

L.M. 1982, c. 16, art. 24.

Material in support of application.

23(1) Where an application or objection in respect of residential premises is referred to a rent regulation officer under this Act, the landlord of the residential premises shall provide such written material in respect of the application or objection as may be required in the regulations or by the rent regulation officer within such period of time as may be fixed by the rent regulation officer, and the other parties to the application or objection may provide such further written material as they think advisable and pertinent within such further period as may be fixed by the rent regulation officer.

Consolidation of applications and objections.

23(2) Where the director is served with 2 or more applications or 2 or more objections, or both, relating to the same residential premises or to residential premises in the same building or the same complex of buildings, he may consolidate the applications and objections as a single matter and refer them all to a single rent regulation officer and thereafter the applications and objections shall for all purposes be joined and treated and proceeded with as a single matter.

Frivolous applications, etc.

23(3) Where a rent regulation officer is satisfied from the material provided under subsection (1) that an application or objection is of no substance or is frivolous, he may with the approval of the director recommend that the application be refused or the objection dismissed, as the case may be.

S.M. 1982, c. 16, s. 23.

Notice of application to parties.

24(1) Where an application or objection is referred to a rent regulation officer under this Act, the rent regulation officer is not required to hold a hearing of any kind in respect of the matter, but he shall send a notice to the parties to the matter setting out

(a) that the application or objection has been made;

(b) that any party to the matter may at any time during the normal office hours inspect the material provided in respect of the application or objection and in the possession of the rent regulation officer within 10 days after the sending of the notice or such further time as may be allowed by the rent regulation officer; and

(c) that the parties may in writing submit representations to the rent regulation officer in respect of the matter within 10 days after the sending of the notice or such further time as may be allowed by the rent regulation officer.

Written notice of recommendation.

24(2) Where a rent regulation officer makes a recommendation in respect of an application or objection made under this Act, he shall send copies of his recommendation to the parties to the matter.

S.M. 1982, c. 16, s. 24.

Appel contre la recommandation

25(1) Dans les 14 jours qui suivent la date où la copie de la recommandation de l'agent de contrôle du loyer est envoyée aux parties conformément au paragraphe 24(2), toute partie à la procédure peut interjeter appel de la recommandation devant un jury en signifiant un avis d'appel au coordonnateur des appels.

Avis d'appel tardif

25(2) Dans le cas où une partie, incapable de signifier l'avis d'appel dans les 14 jours de la notification de la recommandation prévue au paragraphe 24(2), signifie dans les 7 jours qui suivent l'expiration du délai des 14 jours visé au paragraphe (1) l'avis d'appel contre la recommandation au coordonnateur des appels, celui-ci, s'il conclut que la partie appelante n'a pu, pour des motifs légitimes, signifier l'avis dans le délai de 14 jours prévu au paragraphe (1), le reçoit comme s'il s'agissait d'un appel déposé dans le délai mentionné au paragraphe (1). Si la conclusion du coordonnateur est contraire, il rejette l'avis d'appel tardif et aucun autre appel n'est autorisé à l'encontre de la recommandation.

Ed. L.M. 1982-83-84, c. 71, art. 4.

Confirmation de la recommandation

25(3) Faute d'avis d'appel signifié dans le délai prévu au paragraphe (1) ou (2), la recommandation de l'agent de contrôle du loyer se change en décision relative à la demande ou à l'objection et devient exécutoire sans possibilité de révision; là-dessus, l'agent de contrôle du loyer confirme sa propre recommandation à titre de décision relative à la demande ou à l'objection, puis notifie cette confirmation aux parties.

L.M. 1982, c. 16, art. 25; Mod. L.M. 1982-83-84, c. 71, art. 4.

Avis d'audition

26(1) À la réception de l'avis d'appel prévu à l'article 25, le coordonnateur des appels:

a) désigne le jury chargé d'entendre l'appel et le lui renvoie;

b) fixe la date, l'heure et le lieu de l'audition; et

c) signifie aux parties la date, l'heure et le lieu de l'audition, au moins 10 jours à l'avance.

Jonction d'appels

26(2) En cas de signification de deux avis d'appel ou plus en vertu de l'article 25 au sujet du même local d'habitation ou de locaux d'habitation situés dans le même immeuble ou complexe immobilier, le coordonnateur des appels peut les joindre en un appel unique, auquel cas les appels sont subséquemment et à toute fin que de droit, instruits à titre d'appel unique.

L.M. 1982, c. 16, art. 26.

Appeal of recommendation.

25(1) A party to any proceeding in which a rent regulation officer makes a recommendation may, within 14 days after the date copies of the recommendation were sent to the parties under subsection 24(2), appeal the recommendation to a panel by serving a notice of appeal on the Coordinator of Appeals.

Late notice of appeal.

25(2) Where a party is unable to serve a notice of appeal of a recommendation within 14 days after the recommendation was sent to the party under subsection 24(2) and within 7 days after the expiry of the 14 days mentioned in subsection (1), serves a notice of appeal of the recommendation on the Coordinator of Appeals, if the Coordinator of Appeals is satisfied that the party serving the notice of appeal was for good and sufficient reason unable to serve it within the 14 day period mentioned in subsection (1), he shall accept the late notice of appeal as though it was an appeal filed within the time mentioned in subsection (1) but where he is not so satisfied, he shall reject the late notice of appeal and no further or other appeal of the recommendation shall be proceeded with or allowed.

En. S.M. 1982-83-84, c. 71, s. 4.

Confirmation of recommendation.

25(3) Where a notice of appeal of a recommendation of a rent regulation officer is not served by a party within the time allowed under subsection (1) or (2), the recommendation of the rent regulation officer becomes a decision in respect of the application or objection and is final, binding and enforceable and not subject to review, and the rent regulation officer shall thereupon confirm the recommendation as a decision in the application or objection and send notice of the confirmation of the recommendation to the parties.

S.M. 1982, c. 16, s. 25; Am. S.M. 1982-83-84, c. 71, s. 4.

Notice of hearing of appeal.

26(1) Upon receiving a notice of appeal under section 25 the Coordinator of Appeals shall

(a) designate a panel to hear the appeal and refer the appeal to it;

(b) fix a date, time and place for hearing the appeal; and

(c) serve on each party to the appeal a notice of the date, time and place of the hearing at least 10 days before the date thereof.

Consolidation of appeals.

26(2) Where the Coordinator of Appeals is served with 2 or more notices of appeal under section 25 which relate to the same residential premises or to residential premises in the same building or the same complex of building, he may consolidate the appeals as a single appeal and thereafter the appeals shall for all purposes be joined and treated and proceeded with as a single appeal.

S.M. 1982, c. 16, s. 26.

Éléments à considérer par le jury

27(1) Le jury saisi de l'appel tient une audition à l'heure et au lieu prévus pour entendre l'appel qui sera entendu comme une audition de novo et:

a) doit tenir compte:

(i) du loyer perçu pour le local d'habitation juste avant l'entrée en vigueur effective ou envisagée de l'augmentation visée par la demande ou par l'objection,

(ii) de l'augmentation des frais effectivement subie par le propriétaire, selon la définition et la méthode de calcul prévues au règlement,

(iii) de tout changement intervenu dans les services fournis au locataire ou mis à sa disposition, dans les commodités et les biens se rattachant au local d'habitation, et dans leur valeur, et

(iv) de toutes autres questions dont l'examen est requis par le règlement;

b) peut tenir compte du loyer perçu pour le local d'habitation au cours des deux années qui précèdent la date de la demande, des augmentations de loyer imposées et des augmentations de frais effectivement subies par le propriétaire durant la même période, ces frais étant définis par le règlement et calculés conformément au règlement; et

c) doit tenir compte de toute pièce, preuve ou information soumise à l'agent de contrôle du loyer au moment de la demande ou de l'objection; et

d) doit tenir compte de toute preuve ou information produite à l'audition de l'appel; et

e) doit tenir compte de toutes autres questions qu'il juge nécessaires ou indiquées aux fins de l'appel.

Application aux autres locaux d'habitation dans le même immeuble

27(2) Saisi de l'appel concernant le loyer exigé pour un local d'habitation situé dans un immeuble ou complexe immobilier comportant plusieurs locaux d'habitation, le jury peut, à son entière discrétion et sans recevoir d'autres demandes ou objections en appel, joindre aux procédures relatives à l'appel la question du loyer payable pour l'ensemble ou l'un quelconque des autres locaux d'habitation situés dans le même immeuble ou complexe immobilier, peu importe que ce dernier loyer ait été pris en considération ou non par l'agent de contrôle du loyer dont la recommandation est portée en appel, auquel cas le jury:

a) doit constituer tous les locataires de ces autres locaux d'habitation, parties à l'appel, et leur signifier un avis de l'extension de l'appel ainsi que la date, l'heure et le lieu où il poursuivra l'audition; et

b) peut, à son entière discrétion, rendre une ordonnance qui s'applique uniformément ou individuellement aux loyers payables pour la totalité ou une partie de ces autres locaux d'habitation situés dans le même immeuble ou complexe immobilier, auquel cas le paragraphe 22(2) s'applique avec les adaptations nécessaires.

Panel to consider material.

27(1) On an appeal to a panel, the panel shall at the time and place fixed for the hearing of the appeal hold a hearing and conduct the hearing as a hearing de novo and

(a) shall consider

(i) the rent for the residential premises that was in effect immediately before the increase in rent to which the application or objection relates took effect or is to take effect,

(ii) the increases in the actual expenses incurred by the landlord as defined in the regulations and determined as prescribed in the regulations,

(iii) any change in the services provided or available for the tenant or in the amenities and properties associated with the residential premises and the value thereof, and

(iv) any other matters required under the regulations to be considered;

(b) may consider the rent payable for the residential premises during the 2 years before the date of the application, the amounts by which that rent was increased during those 2 years and the increases in the actual expenses incurred by the landlord during those 2 years, as defined in the regulations and determined as prescribed in the regulations; and

(c) shall consider any material, evidence or information submitted to the rent regulation officer on the application or objection;

(d) shall consider any evidence or information submitted at the hearing of the appeal; and

(e) shall consider such other matters as it deems necessary or advisable for the purpose of dealing with the appeal.

Treatment of other premises in same building.

27(2) Where the appeal before a panel relates to rent payable for residential premises in a building or in a complex of buildings in which there are other residential premises, the panel may in its absolute discretion and without receiving further submissions or appeals, join as part of the proceedings on the appeal the matters of rents payable for all or any other residential premises in the same building or in the same complex of buildings whether or not the rent regulation officer whose recommendation is the subject of the appeal considered any rents payable for those other residential premises, and where it does

(a) it shall add all the tenants of those residential premises as parties to the appeal and serve on them notices of the appeal and of the expanded nature of the appeal and of the date, time and place when and where it will continue the hearings in respect of the appeal; and

(b) it may in its absolute discretion make an order which applies uniformly or severally to rents payable for all or any of those other residential premises in the building or in the same complex of buildings, as the case may be, and in that case subsection 22(2) applies mutatis mutandis.

Décision du jury

27(3) À l'issue de l'audition, le jury rend une ordonnance pour confirmer la recommandation de l'agent de contrôle du loyer sur la demande ou l'objection visée par l'appel ou pour substituer sa propre ordonnance à cette recommandation; et il envoie une copie de l'ordonnance aux parties à l'appel.

L.M. 1982, c. 16, art. 27.

Consignation du loyer excédentaire en cas de litige

28(1) Si, pour quelque raison que ce soit, la demande, l'objection ou l'appel subséquent est encore pendant à l'entrée en vigueur de l'augmentation de loyer visée par cette demande ou objection, le directeur peut, par ordonnance et sans procéder à une audition, enjoindre

a) au locataire de payer au propriétaire l'augmentation du loyer pour laquelle le propriétaire lui a donné un avis; et

b) au propriétaire, si ce dernier perçoit ou a perçu l'excédent d'augmentation de loyer par rapport à l'augmentation réglementaire, de lui remettre toute portion de cet excédent;

et le directeur envoie une copie des ordonnances aux parties.

Déboursement des deniers

28(2) Le directeur garde, jusqu'à la décision définitive portant sur la demande ou l'objection, les deniers reçus en vertu de l'ordonnance rendue conformément au paragraphe (1) et les débourse conformément à cette décision définitive.

Remboursement du loyer excédentaire

28(3) Le propriétaire est tenu de rembourser au locataire l'excédent payé par celui-ci dans le cas prévu au paragraphe (1):

a) si aucune ordonnance n'a été rendue en application de ce paragraphe ou si les ordonnances rendues en application de ce paragraphe ne portent pas sur l'intégralité de la différence entre:

(i) le loyer effectivement payé par le locataire au propriétaire, et

(ii) le loyer fixé au cours de la procédure relative à la demande ou à l'objection; et

b) si le locataire a payé au propriétaire un loyer supérieur au montant fixé au cours de cette procédure.

Decision of panel.

27(3) Upon completion of the hearings on an appeal, the panel shall by order affirm the recommendation of the rent regulation officer on the application or objection in respect of which the appeal is made or substitute its own order for the recommendation of the rent regulation officer and shall send copies of the order to the parties to the appeal.

S.M. 1982, c. 16, s. 27.

Payment of excess rent in unresolved disputes.

28(1) Where for any reason whatsoever, an application or objection or an appeal in respect thereof is not finally determined before the date on which the increase in rent in respect of which the application or objection is made takes effect, the director, without a hearing of any kind, may order

(a) the tenant to pay to the landlord the increased rent for which the landlord has given notice; and

(b) where the landlord collects or has collected an increase in rent that is in excess of the increase permitted under the regulations, the landlord to pay to the director that part of the increase in rent that is in excess of the increase in rent permitted under the regulations;.

and the director shall send copies of the order to the parties affected.

Disbursement of moneys.

28(2) Where the director receives payments made pursuant to an order made under subsection (1), he shall hold the moneys until the application or objection is determined and thereupon the director shall disburse the funds he holds in accordance with the final determination.

Refund of excess rent.

28(3) Where, in the circumstances described in subsection (1),

(a) no order is made under subsection (1) or orders made under subsection (1) do not provide for the full difference between

(i) the rent actually paid by a tenant to the landlord, and

(ii) the rent as determined in the proceedings on the application or objection; and

(b) the tenant has paid rent to the landlord in excess of the amount of rent determined in the proceedings;

the landlord shall refund to the tenant the amount of the excess paid by the tenant.

Paiement du loyer complémentaire

28(4) Dans le cas prévu au paragraphe (1), le locataire est tenu de payer le complément au propriétaire:

a) si aucune ordonnance n'a été rendue en application de ce paragraphe ou si les ordonnances rendues en application de ce paragraphe ne portent pas sur l'intégralité de la différence entre:

(i) le montant total du loyer que le locataire a payé au propriétaire et au directeur en exécution de toute ordonnance prévue au paragraphe (1), et

(ii) le loyer fixé au cours de la procédure relative à la demande ou à l'objection; et

b) si le montant total du loyer reçu par le propriétaire et par le directeur est inférieur au loyer fixé au cours de cette procédure.

L.M. 1982, c. 16, art. 28.

Interdiction de percevoir un loyer excessif

29(1) Sous réserve du paragraphe 28(1), nul propriétaire n'a le droit de percevoir ou de tenter de percevoir, à l'égard d'un local d'habitation, un loyer qui, le 1er janvier 1982 ou après cette date a été augmenté au-delà de l'augmentation de loyer prévue par le règlement ou fixée en application de la présente loi pour ce local.

Demande de réduction au niveau antérieur

29(2) Si, à l'issue d'une enquête menée de sa propre initiative ou par suite d'informations reçues d'un locataire, le directeur croit qu'un propriétaire a perçu, à l'égard d'un local d'habitation, un loyer en contravention du paragraphe (1), il peut demander une ordonnance en vertu du présent article en signifiant une demande d'ordonnance au coordonnateur des appels.

Application du paragraphe 26(1)

29(3) Lorsque le coordonnateur des appels est saisi d'une demande conformément au présent article, le paragraphe 26(1) s'applique avec les adaptations nécessaires.

Éléments à considérer par le jury

29(4) Le jury saisi d'une demande faite en application du présent article tient, à la date, à l'heure et au lieu prévus pour l'audition de cette demande, une audition au cours de laquelle il examine:

a) toutes les preuves soumises par le directeur et par les parties;

b) toute question qu'il est requis d'examiner par le règlement; et

c) toute autre question dont il estime l'examen nécessaire ou indiqué pour l'instruction de la demande.

Le paragraphe 27(2) s'applique, avec les adaptations nécessaires, au jury et à la demande.

Payment of additional rent.

28(4) Where, in the circumstances described in subsection (1),

(a) no order is made under subsection (1) or orders made under subsection (1) do not provide for the full difference between

(i) the total rent actually paid by the tenant to the landlord and to the director under any order made under subsection (1), and

(ii) the rent as determined in the proceedings on the application or objection; and

(b) the landlord and the director have received in aggregate less rent from the tenant than the amount of rent determined in the proceedings;

the tenant shall pay to the landlord the amount of the deficiency.

S.M. 1982, c. 16, s. 28.

Prohibition against excess rent.

29(1) Subject to subsection 28(1), no landlord shall collect or attempt to collect a rent for residential premises that has been increased on or after January 1, 1982, in excess of the increase in rent permitted under the regulations or determined under this Act for the residential premises.

Application for rollback of rent.

29(2) Where as the result of an investigation undertaken because of receipt of information from a tenant or undertaken on his own initiative, the director believes that a landlord has collected rent for residential premises in contravention of subsection (1), he may apply for an order under this section by serving an application for the order on the Coordinator of Appeals.

Subsec. 26(1) to apply.

29(3) Where the Coordinator of Appeals receives an application under this section, subsection 26(1) applies mutatis mutandis.

Considerations of panel.

29(4) On an application under this section, the panel designated to hear the application shall, at the time and place fixed for the hearing of the application, hold a hearing and shall consider

(a) all evidence submitted by the director and by any of the parties to the application;

(b) any matters required under the regulations to be considered; and

(c) any other matters it deems necessary or advisable for the purposes of the application;

and subsection 27(2) applies mutatis mutandis to the panel and the application.

Ordonnance de réduction rétroactive

29(5) Si, à l'audition de la demande prévue au présent article, le jury conclut que le propriétaire a perçu, à l'égard d'un local d'habitation, un loyer en contravention du paragraphe (1), peu importe qu'une augmentation de loyer ait été autorisée par décision d'un agent de contrôle du loyer ou par ordonnance d'un jury, le jury saisi peut ordonner que le loyer de ce local d'habitation soit ramené à un niveau égal ou supérieur au loyer en vigueur pour ce local à la date qui précède de 12 mois celle où la contravention fut commise pour la première fois, auquel cas son ordonnance peut être rétroactive à cette dernière date et demeure en vigueur jusqu'à la plus éloignée des dates suivantes:

a) celle de la dernière augmentation légale du loyer de ce local;

b) celle fixée dans l'ordonnance et située dans l'année qui suit la date de celle ci.

Remboursement du loyer excédentaire

29(6) Dans l'ordonnance portant, en application du paragraphe (5), réduction du loyer d'un local d'habitation, le jury doit imposer au propriétaire l'obligation de rembourser à toute personne qui a été ou est locataire de ce local tout loyer payé par cette personne en excédent du loyer réduit, avec intérêts au taux annuel fixé par règlement; le jury peut prévoir, par cette ordonnance:

a) les modalités de remboursement; et

b) le dernier délai de remboursement.

Il doit signifier l'ordonnance aux parties.

L.M. 1982, c. 16, art. 29.

Réduction des services en guise d'augmentation de loyer

30(1) Toute suppression, interruption ou réduction, de la part du propriétaire, d'un service, d'un privilège, d'espaces ou de facilités qu'il fournit ou accordés au locataire pour la jouissance du local d'habitation, est péremptoirement réputée une augmentation de loyer aux fins d'application de la présente loi, à moins que cette suppression, interruption ou réduction ne résulte d'une cause indépendante de sa volonté.

Demande d'évaluation de la réduction des services

30(2) Si, à l'issue d'une enquête entreprise de sa propre initiative ou par suite d'informations fournies par un locataire, le directeur conclut qu'un propriétaire, sans y être forcé par une cause indépendante de sa volonté, a supprimé, interrompu ou réduit un service, un privilège, des espaces ou des facilités qu'il a accordés ou fournis au locataire pour la jouissance du local d'habitation, le directeur peut solliciter l'ordonnance prévue au présent article en signifiant une demande d'ordonnance au coordonnateur des appels.

Order for rollback.

29(5) Upon completing the hearing of an application under this section, if the panel is satisfied that the landlord has collected rent for residential premises in contravention of subsection (1), it may, notwithstanding an increase in the rent has been allowed by a decision of a rent regulation officer, or by an order of a panel, order that the rent payable for the residential premises to which the proceedings relate be reduced to an amount not less than the amount of rent payable therefor in the 12th month preceding the date on which the contravention first occurred and the order may be made retroactive to a date not earlier than the date the contravention first occurred and shall remain in effect until the later of

(a) the next occasion when the rent for the residential premises may lawfully be increased by the landlord; or

(b) such date, not being more than 1 year after the date of the order, as may be fixed by the order.

Refund of excess rent.

29(6) Where under subsection (5) a panel orders a reduction of the rent payable for residential premises, the order shall require the landlord to refund to any person who is or has been a tenant of the residential premises any rent which has been paid by the person in excess of the reduced rent, together with interest at an annual rate fixed in the regulations, and the panel may in the order

(a) prescribe the method by which the refund shall be made; and

(b) fix the date by which the refund shall be made;

and shall serve written notice of its order on the parties affected.

S.M. 1982, c. 16, s. 29.

Reduction in services, etc. as rent increases.

30(1) Where a landlord discontinues, withdraws, ceases to provide or reduces any service, privilege, accommodation or thing in relation to residential premises, that he previously provided or granted to a tenant as part of the tenant's enjoyment or use of the residential premises, unless the discontinuance, withdrawal, ceasing to provide or reduction was beyond the control of the landlord, the discontinuance, withdrawal, ceasing to provide or reduction shall, for the purposes of this Act, be conclusively deemed to be an increase in rent.

Application for valuation for reduction in services, etc.

30(2) Where, as the result of an investigation undertaken because of receipt of information from a tenant or undertaken on his own initiative, the director believes that a landlord has discontinued, withdrawn, ceased to provide or reduced any service, privilege, accommodation or thing in relation to residential premises, that he previously provided or granted to a tenant as part of the tenant's enjoyment or use of the residential premises and that the discontinuance, withdrawal, ceasing to provide or reduction was not beyond the control of the landlord, he may apply for an order under this section by serving an application for the order on the Coordinator of Appeals.

Application du paragraphe 26(1)

30(3) En cas de réception par le coordonnateur des appels de la demande prévue au présent article, le paragraphe 26(1) s'applique avec les adaptations nécessaires.

Éléments à considérer par le jury

30(4) Le jury saisi d'une demande faite en application du présent article tient, à la date, à l'heure et au lieu prévus pour l'audition de cette demande, une audition au cours de laquelle il examine:

a) toutes les preuves soumises par le directeur et par les parties;

b) Toute question qu'il est requis d'examiner par le règlement; et

c) toute autre question dont il estime l'examen nécessaire ou indiqué pour l'instruction de la demande.

Le paragraphe 27(2) s'applique, avec les adaptations nécessaires, au jury et à la demande.

Ordonnance d'évaluation

30(5) Si, à l'issue de l'audition, le jury est convaincu:

a) que le propriétaire a supprimé, interrompu ou réduit un service, un privilège, des espaces ou des facilités qu'il avait fournis ou accordés au locataire pour la jouissance du local d'habitation; et

b) que cette suppression, interruption ou réduction ne résultait pas d'une cause indépendante de la volonté du propriétaire;

il en fixe la valeur; et s'il conclut que le propriétaire a augmenté d'autant le loyer du local d'habitation et contrevenu de ce fait au paragraphe 29(1), il peut instruire la demande d'évaluation au même titre qu'une demande faite par le directeur en application de l'article 29, au sujet de ce local d'habitation.

L.M. 1982, c. 16, art. 30.

Charge de la preuve en cas de demande fondée sur l'art. 29 ou 30

31 En cas de demande fondée sur l'article 29 ou 30, il incombe au directeur de convaincre le jury:

a) que le propriétaire a perçu un loyer pour un local d'habitation en violation du paragraphe 29(1); ou, selon le cas,

b) que le propriétaire a supprimé, interrompu ou réduit un service, un privilège, des espaces ou des facilités qu'il avait fournis ou accordés au locataire pour la jouissance du local d'habitation;

mais il incombe au propriétaire de convaincre le jury:

c) que toute suppression, interruption ou réduction de service, de privilège, d'espaces ou de facilités se rattachant au local d'habitation était due à une cause indépendante de sa volonté; et

d) que toute augmentation de loyer résultant de la suppression, de l'interruption ou de la réduction d'un service, d'un privilège, d'espaces ou de facilités se rattachant au local d'habitation ne constituait pas une violation du paragraphe 29(1).

L.M. 1982, c. 16, art. 31.

Application of subsec. 26(1).

30(3) Where the Coordinator of Appeals receives an application under this section, subsection 26(1) applies mutatis mutandis.

Considerations of panel.

30(4) On an application under this section, the panel designated to hear the application shall, at the time and place fixed for the hearing of the application, hold a hearing and shall consider

(a) all evidence submitted by the director and by any of the parties to the application;

(b) any matters required under the regulations to be considered; and

(c) any other matters it deems necessary or advisable for the purposes of the application;

and subsection 27(2) applies mutatis mutandis to the panel and the application.

Order of valuation.

30(5) Upon completion of the hearing, if the panel is satisfied that

(a) the landlord has discontinued, withdrawn, ceased to provide or reduced any service, privilege, accommodation or thing in relation to the residential premises that he previously provided or granted to a tenant as part of the tenant's enjoyment or use of the residential premises; and

(b) the discontinuance, withdrawal, ceasing to provide or reduction was not beyond the control of the landlord;

the panel shall fix the value of the discontinuance, withdrawal, ceasing to provide or reduction and if, upon the valuation thereof, it finds that the landlord has thereby increased the rent for the residential premises to result in a violation of subsection 29(1), it may proceed on the same application as though an application had been made in respect of the residential premises by the director under section 29.

S.M. 1982, c. 16, s. 30.

Onus in applications under secs. 29 and 30.

31 On applications under sections 29 and 30, the onus is on the director to satisfy the panel

(a) that the landlord has collected rent for residential premises in contravention of subsection 29(1); or

(b) that the landlord has discontinued, withdrawn, ceased to provide or reduced a service, privilege, accommodation or thing in relation to residential premises that he previously provided or granted to a tenant as part of the tenant's enjoyment or use of the residential premises;

as the case may be, but the onus is on the landlord to satisfy the panel

(c) that any discontinuance, withdrawal, ceasing to provide or reduction of a service, privilege, accommodation or thing in relation to residential premises was beyond his control; and

(d) that any increase in rent resulting from the discontinuance, withdrawal, ceasing to provide or reduction of any service, privilege, accommodation or thing in relation to residential premises did not result in a violation of subsection 29(1).

S.M. 1982, c. 16, s. 31.

Exécution des ordonnances rendues en application de l'article 29 ou 30

32(1) Le directeur peut exécuter toute ordonnance rendue par le jury en application de l'article 29 ou 30:

a) en ordonnant la réduction des loyers dus par un locataire maintenu dans les lieux à titre d'occupant; ou

b) en ordonnant que tout ou partie des loyers dus par les occupants lui soit remis jusqu'à ce que les remboursements atteignent le montant prévu par l'ordonnance;

ou en ordonnant en partie la réduction prévue à l'alinéa a) et en partie la remise au directeur de tout ou partie des loyers prévue à l'alinéa b). Le directeur peut rendre l'ordonnance prévue au présent paragraphe de sa propre initiative, sans notification préalable et sans audition de quelque nature qu'elle soit.

Copie de l'ordonnance envoyée aux parties

32(2) Une copie de l'ordonnance rendue par le directeur en application du paragraphe (1) est envoyée aux parties.

Effets du paiement effectué en vertu d'une ordonnance

32(3) Le locataire qui paie le loyer conformément à une ordonnance rendue en application du paragraphe (1) n'est tenu d'aucun arriéré suite à l'omission ou au refus de payer au propriétaire le loyer réduit ou le loyer remis au directeur conformément à l'ordonnance.

Déboursement des loyers remis au directeur

32(4) À la réception des loyers qui lui sont remis conformément à une ordonnance rendue en application du paragraphe (1), le directeur débourse les deniers au profit des personnes qui ont droit aux sommes prévues par l'ordonnance qu'il exécute.

L.M. 1982, c. 16, art. 32.

PARTIE III

DISPOSITIONS GÉNÉRALES

Demande d'autorisation de réfection

33(1) Le propriétaire qui envisage de réparer, de rénover et de remettre à neuf un immeuble à l'intérieur duquel sont situés des locaux d'habitation qui sont ou seront donnés à bail, peut demander, en la forme réglementaire, l'autorisation de réfection aux fins d'application de l'alinéa 2(2)b), en signifiant au coordonnateur des appels, au moins un mois avant le début des travaux, la demande accompagnée de tous les détails relatifs aux plans de réfection et de tels documents et informations que peut prévoir le règlement

Enforcement of orders under sec. 29 or 30.

32(1) Every order of a panel made under section 29 or 30 may be enforced from time to time by the director

(a) by ordering abatement of rents payable by a tenant who continues in occupancy; or

(b) by ordering that rents, or part of rents payable by tenants in occupancy be paid to the director until sufficient funds are redirected to satisfy the order;

or partly by ordering abatement under clause (a) and partly by ordering rents or part of rents to be paid to the director under clause (b) and the director may make an order under this subsection on his own initiative, without notice and without a hearing of any kind.

Notice of order.

32(2) Where the director makes an order under subsection (1), he shall send copies of the order to the parties affected.

Effect of payment under order.

32(3) Where a tenant pays rent in accordance with an order made under subsection (1), he shall be deemed not to be in arrears of rent for failure or refusal to pay to the landlord any rents abated or paid to the director pursuant to the order.

Disbursement of rents paid to director.

32(4) Upon receipt of rents paid to the director pursuant to an order made under subsection (1) the director shall disburse the funds to the persons to whom moneys are due under the order being enforced.

S.M. 1982, c. 16, s. 32.

PART III

GENERAL

Application for approval of rehabilitation.

33(1) Where a landlord proposes to repair, renovate and refurbish a building in which are situated residential premises which are or are to be rented, he may apply in the manner specified in the regulations for approval of the repair, renovation and refurbishing as rehabilitation of the building for the purposes of clause 2(2)(b) by serving on the Coordinator of Appeals at least 1 month before beginning the repair, renovation and refurbishing of the building an application for approval accompanied by full details of the plans therefor and such other material and information as may be required under the regulations.

Procédure

33(2) À la réception de la demande visée au présent article, le coordonnateur des appels:

a) la renvoie devant un jury avec tous les documents joints;

b) fixe la date, l'heure et le lieu de l'audition de la demande; et

c) signifie aux parties la date, l'heure et le lieu de l'audition, au moins 10 jours à l'avance.

Le jury instruit l'affaire, l'article 26 et le paragraphe 27(2) s'appliquant avec les adaptations nécessaires.

Décision du jury

33(3) À l'audition d'une demande faite en vertu du paragraphe (1), le jury doit tenir compte des questions comme le prescrit le règlement à l'égard de ces demandes, et s'il conclut:

a) que la réparation, la rénovation ou la remise à neuf de l'immeuble constitue une réfection dans la mesure prévue au règlement; et

b) que les locataires des locaux d'habitation situés dans l'immeuble seront traités d'une manière acceptable pendant la réfection;

il doit, par ordonnance, autoriser la réparation, la rénovation et la remise à neuf selon les plans visés dans l'ordonnance, avec ou sans conditions relatives à la manière dont les locataires dans l'immeuble seront traités, à titre de réfection de l'immeuble aux fins d'application de l'alinéa 2(2)b). Il doit aussi, aux fins d'application de l'ordonnance d'exemption rendue en vertu du paragraphe (7), fixer une période, relativement à l'immeuble, ou une période différente pour chaque partie de l'immeuble, d'une durée que le jury peut établir mais n'excédant pas cinq ans, pour l'exemption prévue à l'alinéa 2(2)b) relativement à l'immeuble ou à une partie de celui-ci et à laquelle le propriétaire a droit, suite à une ordonnance d'exemption rendue en vertu du paragraphe (7) relativement à cet immeuble ou à cette partie de l'immeuble.

Modification des plans

33(4) Au cours de l'audition de la demande visée au paragraphe (1), le propriétaire peut soumettre les modifications apportées aux plans de réparation de rénovation et de remise à neuf de l'immeuble visé et le jury peut exiger que ces modifications lui soient soumises; dans le cas où les modifications apportées à ces plans peuvent avoir un effet sur la manière dont les locataires dans l'immeuble seront traités, le jury signifie à ces derniers un avis des modifications avant de poursuivre l'audition de la demande.

Procedure on application.

33(2) Upon receiving an application under this section, the Coordinator of Appeals shall

(a) refer the application and all accompanying material to a panel;

(b) fix a date, time and place for hearing the application; and

(c) serve on each party to the application a notice of thedate, time and place of the hearing at least 10 days before the date thereof;

and the panel shall proceed with the matter and section 26 and subsection 27(2) apply mutatis mutandis, to the matter.

Determination by panel.

33(3) Upon hearing an application under subsection (1), a panel shall consider the matters required under the regulations to be considered on such applications and if the panel determines

(a) that the repair, renovation and refurbishing of the building constitutes rehabilitation of the building to the extent set out in the regulations; and

(b) that the tenants of residential premises in the building will be treated in an acceptable manner having regard to the rehabilitation;

the panel shall by order approve the repair, renovation and refurbishing in accordance with plans referred to in the order as rehabilitation of the building for the purposes of clause 2(2)(b) either with or without conditions respecting the treatment of tenants in the building and fix, for the purposes of an order of exemption under subsection (7), a period in respect of the building, or a different period for each part of the building, of such length not exceeding 5 years as the panel may determine, for the exemption under clause 2(2)(b) in respect of the building or that part thereof, as the case may be, to which the landlord will be entitled upon the issue of an order of exemption under subsection (7) in respect of the building or that part thereof, as the case may be.

Alterations to plans.

33(4) During the course of a hearing of an application under subsection (1), the landlord may submit alterations to the plans for the repair, renovation and refurbishing of the building to which the application relates and the panel may require alterations to the plans to be submitted by the landlord but where the alterations to the plans may affect the manner in which tenants in the building will be treated, the panel shall serve notices of the submission of the alterations on the tenants before continuing the hearings on the application.

Modification de l'ordonnance

33(5) Une fois la réparation, la rénovation et la remise à neuf d'un immeuble approuvées par un jury à titre de réfection aux fins d'application de l'alinéa 2(2)b), le propriétaire peut, avant ou pendant les travaux de réfection, demander une ordonnance portant modification des plans approuvés ou de toute condition imposée par l'ordonnance d'autorisation ou de toute période fixée par l'ordonnance d'exemption prévue à l'alinéa 2(2)b), en envoyant au coordonnateur des appels une demande de modification de cette ordonnance, laquelle demande est instruite de la même façon qu'une demande visée par le paragraphe (1).

Demande d'exemption

33(6) Une fois la réparation, la rénovation et la remise à neuf d'un immeuble approuvées par un jury à titre de réfection aux fins d'application de l'alinéa 2(2)b) et la réfection de tout ou partie de l'immeuble achevée conformément à l'ordonnance approuvant la réfection, le propriétaire peut faire une demande d'exemption selon l'alinéa 2(2)b) relativement à l'immeuble ou à la partie de l'immeuble dont les travaux de réfection sont achevés en signifiant au coordonnateur des appels une demande d'exemption et tout autre document et information prescrits par le règlement. En renvoyant la demande faite en vertu du présent paragraphe à un jury, comme le prescrit le paragraphe (2), le coordonnateur des appels peut renvoyer la demande à un jury différent de celui qui a approuvé la réfection.

Ordonnance d'exemption

33(7) À l'audition d'une demande faite en vertu du paragraphe (6), le jury doit tenir compte des questions comme le prescrit le règlement à l'égard de ces demandes, et une fois que le jury a conclu que la réfection de tout ou partie de l'immeuble a été achevée en conformité avec l'ordonnance approuvant la réfection aux fins d'application de l'alinéa 2(2)b), il doit, par ordonnance, accorder une exemption selon l'alinéa 2(2)b) relativement à l'immeuble ou à une partie de l'immeuble, selon le cas, pour la période qui a été fixée en vertu du paragraphe (3) relativement à l'immeuble ou à cette partie de l'immeuble. Lorsqu'une ordonnance accorde une exemption aux fins d'application de l'alinéa 2(2)b) relativement à une partie seulement de l'immeuble, le même jury ou d'autres jurys peuvent rendre d'autres ordonnances en conformité avec le présent paragraphe lors de demandes subséquentes accordant des exemptions relativement à d'autres parties de l'immeuble.

Copie de l'ordonnance envoyée aux parties

33(8) Une copie de l'ordonnance rendue par le jury en application du présent article est envoyée aux parties.

Variation of order.

33(5) Where a panel has approved the repair, renovation and refurbishing of a building as rehabilitation of the building for the purpose of clause 2(2)(b), the landlord may apply, either before or during the work of rehabilitation, for an order varying the plans approved or any conditions attached to the order or any period fixed by the order for the exemption under clause 2(2)(b), by sending to the Coordinator of Appeals an application for variation of the order and an application under this subsection shall be dealt with and proceeded with as though it were an application under subsection (1).

Application for exemption.

33(6) Where a panel has approved the repair, renovation and refurbishing of a building as rehabilitation of a building for the purposes of clause 2(2)(b) and the rehabilitation of all or part of the building has been completed in conformity with the order approving the rehabilitation, the landlord may apply for the exemption under clause 2(2)(b) in respect of the building or that part of the building in respect of which the rehabilitation has been compl. ted by serving on the Coordinator of Appeals an application for the exemption and such other material and information as may be required under the regulations and the Coordinator of Appeals in referring an application under this subsection to a panel as required under subsection (2) may refer the application to a different panel than the panel that granted the approval of the rehabilitation.

Order of exemption.

33(7) Upon hearing an application under subsection (6), a panel shall consider the matters required under the regulations to be considered on such applications and if the panel determines that the rehabilitation of all or part of the building has been completed in conformity with the order approving the rehabilitation for the purposes of clauses 2(2)(b) it shall, by order, grant an exemption under clause 2(2)(b) in respect of the building, or that part thereof, as the case requires, for such period as has been fixed under subsection (3) in respect of the building or that part thereof, as the case requires, and, where an order under this subsection grants an exemption under clause 2(2)(b) for part only of a building, further orders may be made under and in accordance with this subsection by the same or other panels on subsequent applications granting exemptions for other parts of the building.

Notice of order.

33(8) Where a panel makes an order under this section, it shall send copies of the order to the parties affected.

Défense de convertir un immeuble en condominium

33(9) Une fois la réparation, la rénovation et la remise à neuf d'un immeuble approuvées par un jury à titre de réfection aux fins d'application de l'alinéa 2(2)b), il est interdit de faire enregistrer ou de tenter de faire enregistrer une déclaration sous le régime de la Loi sur les condominiums à l'égard du terrain sur lequel cet immeuble est érigé, avant l'expiration d'un délai de cinq ans à partir de la date de l'ordonnance d'exemption délivrée en vertu du paragraphe (7) et suivant l'achèvement de tous les travaux requis pour la réfection approuvée.

Dépôt de l'avis au Bureau des titres fonciers

33(10) Une fois la réparation, la rénovation et la remise à neuf d'un immeuble approuvées par un jury à titre de réfection aux fins d'application de l'alinéa 2(2)b), le coordonnateur des appels dépose au Bureau des titres fonciers compétent un avis attestant que l'enregistrement d'une déclaration sous le régime de la Loi sur les condominiums à l'égard du terrain sur lequel cet immeuble est érigé, est interdit en application du paragraphe (9); lequel avis, portant la signature du coordonnateur, énonce la description aux fins de l'enregistrement du terrain en question ainsi que la date où la réfection a été autorisée par ce jury.

Transcription sur le titre foncier

33(11) Dès le dépôt de l'avis prévu au paragraphe (9), le registraire du district en transcrit la mention sur le titre foncier relatif au terrain en question et envoie un avis de ce dépôt au propriétaire inscrit de ce terrain.

Effets du dépôt de l'avis

33(12) Une fois l'avis déposé conformément au paragraphe (10) au sujet d'un terrain, le registraire du district ne doit pas accepter pour enregistrement une déclaration faite en application de la Loi sur les condominiums à l'égard de ce terrain, tant que le retrait de cet avis n'a pas été déposé.

Retrait de l'avis

33(13) Lorsque cinq années se sont écoulées depuis la date de l'ordonnance d'exemption délivrée en vertu du paragraphe (7) et suivant l'achèvement de tous les travaux requis pour la réfection d'un immeuble, approuvée par un jury aux fins d'application de l'alinéa 2(2)b), le coordonnateur des appels doit signer le retrait de l'avis déposé conformément au paragraphe (10) à l'égard du terrain sur lequel est érigé cet immeuble; dès le dépôt du retrait de l'avis au Bureau des titres fonciers compétent, le registraire du district doit annuler la mention de l'avis portée sur le titre foncier relatif au terrain en question.

L.M. 1982, c. 16, art. 33.

Prohibition on conversion to condominium.

33(9) Where a panel has approved the repair, renovation and refurbishing of a building as rehabilitation of the building for the purpose of clause 2(2)(b), no person shall register or attempt to register a declaration under The Condominium Act in respect of the land on which the building is situated until the expiry of 5 years after the date of issue of an order of exemption issued under subsection (7) as the result of the completion of all work required to accomplish the rehabilitation approved.

Filing of notice in L.T.O.

33(10) Where a panel has approved the repair, renovation and refurbishing of a building as rehabilitation of the building for the purposes of clause 2(2)(b), the Coordinator of Appeals shall file a notice in the appropriate land titles office giving notice that the registration of a declaration under The Condominium Act in respect of the land on which the building is situated is prohibited under subsection (9) and the notice shall set out the legal description of the land affected and the date upon which the approval of the rehabilitation was granted by the panel and shall bear the signature of the Coordinator of Appeals.

Endorsement on title.

33(11) Upon the filing of a notice under subsection (9), the district registrar shall endorse a memorial of the notice on the certificate of title for the land affected and shall send notice of the filing on the registered owner of the land affected.

Effect of filing notice.

33(12) Where a notice has been filed under subsection (10) in respect of land, the district registrar shall not accept for registration a declaration under The Condominium Act in respect of the land until a withdrawal of the notice has been filed.

Withdrawal of notice.

33(13) Where 5 years have expired since the date of issue of an order of exemption issued under subsection (7) as a result of the completion of all work required to accomplish the rehabilitation of a building approved by a panel for the purposes of clause 2(2)(b), the Coordinator of Appeals shall execute a withdrawal of a notice filed under subsection (10) in respect of the land on which the building is situated and upon the withdrawal of the notice being filed in the appropriate land titles office, the district registrar shall cancel the memorial of the notice on the certificate of title for the land affected.

S.M. 1982, c. 16, s. 33.

État à l'intention du nouveau propriétaire

34(1) Dans le cas où un nouveau propriétaire acquiert le droit de propriété sur des locaux d'habitation ou un intérêt dans ces locaux, l'ancien propriétaire doit lui signifier un état indiquant le loyer effectivement perçu, au cours des deux années précédant la date de l'acquisition, pour chacun des locaux d'habitation touchés par cette acquisition, ainsi que les sommes encore dues en vertu d'une décision rendue conformément au paragraphe 19(4), d'une ordonnance rendue en application de l'article 29 ou 30, ou d'une ordonnance rendue en appel de cette décision ou ordonnance.

Obligations du nouveau propriétaire

34(2) Dans le cas où un nouveau propriétaire acquiert le droit de propriété sur des locaux d'habitation ou un intérêt dans ces locaux, il assume toutes les responsabilités et obligations à l'égard des loyers excédentaires payés par les locataires de ces locaux avant ou après l'acquisition, qu'il y ait eu ou non une ordonnance relative à ces loyers excédentaires et que l'ordonnance en la matière ait été rendue en vertu de la présente loi avant ou après cette acquisition; il a cependant le droit de recouvrer de l'ancien propriétaire le montant des loyers excédentaires qu'il a remboursés, réduits ou payés en raison des loyers excédentaires payés par les locataires avant l'acquisition.

L.M. 1982, c. 16, art. 34.

Interdictions faites aux propriétaires

35(1) Il est interdit à tout propriétaire de local d'habitation ou à quiconque le représente de commettre l'un quelconque des actes suivants, à savoir:

a) percevoir ou tenter de percevoir d'un locataire du local d'habitation un paiement supplémentaire, une commission, une prime, une pénalité ou un dépôt de garantie pour les clés;

b) demander, recevoir ou accepter d'un locataire du local d'habitation un prix excessif pour les meubles dont ce local est garni;

c) utiliser ou tenter d'utiliser un subterfuge pour contourner ou faire échec à une disposition quelconque de la présente loi, du règlement ou d'une ordonnance, conclusion ou décision rendue en application de la présente loi; ou

d) entraver, retarder ou gêner l'exercice, par un jury, par l'un de ses membres, par un agent de contrôle du loyer ou par le directeur, de leurs fonctions et pouvoirs prévus par la présente loi.

Statement for new landlord.

34(1) Where the right, title or interest of a landlord in residential premises is acquired by a new landlord, the landlord from whom the right, title or interest was acquired shall serve on the new landlord a written statement stating the actual rent charged for each residential premises affected by the acquisition during the 2 years immediately preceding the date on which the new landlord acquires the right, title or interest and the amount of moneys remaining due and unpaid under any decision under subsection 19(4) or any order issued under section 29 or 30 or under an order on an appeal from such a decision or order.

Obligations of new landlord.

34(2) Where the right, title or interest of a landlord in residential premises is acquired by a new landlord, all duties and obligations arising out of the payment of excess rents paid by tenants of the residential premises become the responsibility of the new landlord whether the excess rents were paid by the tenants before or after the date the new landlord acquired the right, title or interest, whether any order made respecting the excess rents was made before or after that date and whether or not any order was made under this Act respecting the excess rents but the new landlord is entitled to recover from the landlord from whom the right, title or interest was acquired the amount of excess rents that were refunded, rebated or paid by the new landlord and which were on account of excess rents paid by tenants before the new landlord acquired the right, title or interest.

S.M. 1982, c. 16, s. 34.

Prohibition relating to landlords.

35(1) No landlord, or any person acting on behalf of the landlord shall, directly or indirectly, with respect to any residential premises

(a) collect or attempt to collect from a tenant of the residential premises, a premium, commission, bonus, penalty or key deposit; or

(b) demand, receive or accept from a tenant of the residential premises any unreasonable consideration for furniture situated therein; or

(c) employ, use or attempt to employ or use any subterfuge with a view to avoiding or defeating any provision of this Act or the regulations or any order, determination or decision made under this Act; or

(d) impede, delay or obstruct a panel or any member thereof, or any rent regulation officer or the director in the performance of their duties and functions or the exercise of their powers under this Act.

Interdictions faites aux locataires

35(2) Il est interdit au locataire d'un local d'habitation:

a) de le donner en sous-location moyennant un loyer supérieur au loyer légalement perçu par le propriétaire pour ce local;

b) de donner en sous-location une partie quelconque du local d'habitation moyennant un loyer qui, ajouté aux loyers payables pour toutes les autres parties de ce local, est supérieur au loyer légalement perçu par le locataire pour ce local; ou

c) de percevoir quelque contrepartie, droit, paiement supplémentaire, prime, commission, pénalité ou dépôt de garantie pour les clés en échange de la sous-location de tout ou partie du local d'habitation, ou en échange de la cession du bail.

Réticence

35(3) Il est interdit:

a) de refuser de communiquer les informations, documents, dossiers, correspondance, comptes ou registres dont la communication est requise par un jury, par l'un de ses membres, par un agent de contrôle du loyer ou par le directeur aux fins d'application de la présente loi; ou

b) de produire ou de soumettre à un jury, à l'un de ses membres, à un agent de contrôle du loyer ou au directeur, des informations, documents, dossiers, correspondance, comptes ou registres faux ou trompeurs.

L.M. 1982, c. 16, art. 35.

Peine

36(1) Quiconque viole ou n'observe pas une disposition quelconque de la présente loi ou du règlement, ou une ordonnance, décision ou conclusion rendue par un agent de contrôle du loyer, par un jury ou par le directeur, est coupable d'une infraction et passible, sur déclaration sommaire de culpabilité, d'une amende de $100 à $5000.

Infractions successives

36(2) Il est compté une infraction distincte pour chaque jour au cours duquel se poursuit la violation ou la non-observation du paragraphe 17(3), 17(4), 18(1) ou 29(1) ou de l'article 35.

L.M. 1982, c. 16, art. 36.

Prohibitions relating to tenants.

35(2) No tenant of residential premises shall

(a) sublet the residential premises for a rent that is greater than the rent that is lawfully charged by the landlord for the residential premises; or

(b) sublet any portion of the residential premises for a rent which together with all other rents payable for all other portions of the residential premises is a sum that is greater than the rent that is lawfully charged by the landlord for the residential premises; or

(c) charge any consideration, fee, premium, commission, bonus, penalty or key deposit for subletting the residential premises or any portion thereof, or for assigning a tenancy agreement for the residential premises.

Withholding information, etc.

35(3) No person shall

(a) withhold any information, document, file, correspondence, account or record required by a panel or any member thereof, by any rent regulation officer or by the director for the purposes of this Act; or

(b) produce or submit to a panel or any member thereof, to a rent regulation officer or to the director any information, document, file, correspondence, account or record that is false or misleading.

S.M. 1982, c. 16, s. 35.

Penalty.

36(1) Any person who violates or fails or neglects to comply with any of the provisions of this Act or the regulations, or with an order, decision or determination of a rent regulation officer, a panel or the director, is guilty of an offence and liable on summary conviction to a fine of not less than $100.00 or more than $5,000.00.

Continuing offence.

36(2) Where a violation of, or a failure or neglect to comply with subsection 17(3), 17(4), 18(1) or 29(1) or section 35 continues for more than one day, the person violating or failing or neglecting to comply with the sections is guilty of a separate offence for each day that the violation or failure or neglect to comply continues.

S.M. 1982, c. 16, s. 36.

Signification d'avis

37(1) Dans le cas où l'application de la présente loi ou du règlement requiert la signification d'un avis ou autre document à une personne, cette signification peut se faire:

a) à personne;

b) entre les mains d'un adulte se trouvant à la dernière adresse de cette personne, telle que la connaît la personne tenue à la signification;

c) par lettre recommandée ou certifiée, envoyée à la dernière adresse de cette personne, telle que la connaît la personne tenue à la signification; ou

d) aux personnes qui sont parties à une demande, une objection, un appel ou une procédure et qui relèvent d'une catégorie particulière, selon la procédure prévue par le règlement pour la signification d'avis ou de documents aux parties de cette catégorie; l'avis ou le document signifié à une catégorie de parties conformément au règlement est réputé signifié à chaque partie de cette catégorie, le jour où la procédure prévue par le règlement est observée.

Signification indirecte

37(2) Dans le cas où la personne tenue de signifier un avis ou autre document en application de la présente loi ou du règlement n'est pas en mesure de le signifier conformément à l'alinéa (1)a) ou b) parce qu'elle ne connaît pas l'adresse du destinataire ou n'en est pas certaine, elle peut faire une demande ex parte à un juge d'une cour de comté en vue d'obtenir une ordonnance de signification indirecte; si le juge est convaincu que cette personne a fait raisonnablement diligence pour signifier l'avis ou autre document comme elle en est requise, il peut rendre l'ordonnance autorisant la signification indirecte au destinataire, de la manière qu'il juge raisonnable.

Envoi d'avis

37(3) L'avis ou autre document, dont l'envoi à telle ou telle personne est requis par la présente loi ou par le règlement, peut être envoyé:

a) par courrier de première classe, à la dernière adresse du destinataire telle qu'elle est connue de la personne tenue à l'envoi, auquel cas cet avis ou autre document est réputé reçu par le destinataire le troisième jour qui suit la date de la mise à la poste; ou

b) selon toute autre méthode de signification prévue au paragraphe (1).

L.M. 1982, c. 16, art. 37.

Règlements

38(1) Pour l'application des dispositions de la présente loi conformément à leur esprit, le lieutenant-gouverneur en conseil peut établir des règlements qui leur sont compatibles, lesquels règlements, établis sous l'autorité du présent article et conformément au pouvoir qui y est accordé, ont force de loi. Sans restreindre la portée générale de ce qui précède, le lieutenant-gouverneur en conseil peut notamment, par règlement:

Serving notice, etc.

37(1) Where, under this Act or the regulations, a notice or other document is required to be served on any person, it may be served

(a) by personal service on the person; or

(b) by leaving it personally with an adult on the premises at the latest address of the person known to the person required to serve it;

(c) by mailing it by registered or certified mail addressed to the latest address of the person known to the person required to serve it; or

(d) to persons who are parties to an application, objection, appeal or proceeding and who are of any particular class, in the manner prescribed in the regulations for serving notices or documents on parties of that class and, where it is served on a class of parties in compliance with the regulations, it shall be conclusively deemed to have been served on every party in that class on the day on which compliance with the regulations is completed.

Substitutional service.

37(2) Where, under this Act or regulations, a notice or other document is required to be served on any person, and the person required to serve the notice or other document is unable to serve it in accordance with clause (1)(a) or (b), and is unaware or uncertain of any recent address of the person on whom the notice or document is required to be served, the person required to serve the notice or document may apply ex parte to a judge of a county court for an order for substitutional service and the judge may, if he is satisfied that every reasonable effort has been made to serve the notice or document as required, grant an order for such substitutional service on the other person as he deems reasonable.

Sending notice, etc.

37(3) Where, under this Act or the regulations, a notice or other document is required to be sent to any person, it may be sent

(a) by mailing it by ordinary first-class mail addressed to the latest address of the person known to the person required to send the notice or document, in which case it shall be conclusively deemed to have been received by the addressee on the 3rd day after the day it was mailed; or

(b) by complying with any method of service set out in subsection (1).

S.M. 1982, c. 16, s. 37.

Regulations.

38(1) For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations ancillary thereto and not inconsistent therewith; and every regulation made under, and in accordance with the authority granted by this section has the force of law; and without restricting the generality of the foregoing, the Lieutenant Governor in Council may make such regulations, not inconsistent with any other provision of this Act

a) exempter de l'application de tout ou partie des dispositions de la présente loi certains locaux d'habitation ou certaines catégories de locaux d'habitation, dont toute catégorie définie par le loyer des locaux d'habitation qui en font partie;

b) fixer, le cas échéant, le montant ou la formule de calcul du montant dont le loyer d'un local d'habitation peut être augmenté pour les termes commençant le 1er janvier 1982 ou

après cette date, par rapport au loyer de ce local au cours de n'importe quel terme antérieur;

c) définir la nature ou l'étendue des réparations, des rénovations et de la remise à neuf requise à titre de réfection d'un immeuble aux fins d'application de l'alinéa 2(2)b);

d) définir la nature et le contenu des documents que les propriétaires ou les locataires sont requis de produire à l'occasion d'une demande, d'une objection, d'un appel ou d'une procédure qu'autorisent certaines dispositions de la présente loi;

e) définir les questions que les agents de contrôle du loyer, les jurys ou le directeur doivent considérer en matière de demandes, d'objections, d'appels ou de procédures sous le régime de certaines dispositions de la présente loi;

f) définir la méthode de détermination des frais subis par un propriétaire dans l'exploitation du local d'habitation et, à cette fin, définir les frais et la nature des dépenses qui sont des frais ou qui ne sont pas réputées être des frais subis par un propriétaire dans l'exploitation du local d'habitation;

g) définir les limitations et conditions relatives au rajustement du loyer d'un local d'habitation, dans les cas d'application du paragraphe 22(2);

h) fixer le taux annuel des intérêts que doit payer un propriétaire en application des articles 29 et 30;

i) prescrire les formules à utiliser en application de la présente loi, leur contenu et les renseignements qui doivent y figurer;

j) définir la méthode d'envoi ou de signification de tout avis, dont l'envoi ou la signification, à une catégorie particulière de parties à une demande, une objection, un appel ou une procédure, est requis par la présente loi;

k) fixer le taux d'augmentation proportionnelle aux fins d'application de l'article 41.

Règlements rétroactifs

38(2) Par dérogation à la Loi sur les textes réglementaires, tout règlement établi en application du présent article dans les 12 mois qui suivent son entrée en vigueur peut être rendu rétroactif à un jour qui précède cette entrée en vigueur.

L.M. 1982, c. 16, art. 38.

(a) exempting certain residential premises or classes of residential premises including, without limiting the generality of the foregoing, a class defined by reference to the amount of rent payable for residential premises, from the application of all or part of the provisions of this Act;

(b) specifying the amount, if any, or the formula for determining the amount, if any, by which rent payable for residential premises for rental payment periods may be increased, on or after January 1, 1982, over the rent payable for the residential premises for any previous rental payment period;

(c) prescribing the nature or extent or both of repairs, renovations and refurbishing required to qualify as rehabilitation of a building for the purposes of clause 2(2)(b);

(d) prescribing the nature and content of written information that landlords or tenants are required to provide in respect of applications, objections, appeals or proceedings under particular provisions of this Act;

(e) prescribing matters required to be considered by rent regulation officers, panels or the director in respect of applications, objections, appeals or proceedings made under particular provisions of this Act;

(f) prescribing the manner of determining expenses incurred by a landlord in respect of the operation of residential premises and for that purpose defining expenses, and prescribing the nature of expenditures which are expenses, or which shall be deemed not to be expenses, incurred by a landlord in respect of the operation of residential premises;

(g) prescribing the limitations and conditions respecting adjustments to rents for residential premises where subsection 22(2) applies;

(h) fixing the annual rate at which interest shall be paid by a landlord under sections 29 and 30;

(i) prescribing forms for use under this Act, the contents thereof and the information to be disclosed therein;

(j) prescribing the manner for sending or serving any notice required to be sent or served under this Act to or on any particular class of parties to an application, objection, appeal or proceeding;

(k) fixing a percentage increase for the purposes of section 41.

Retroactive regulations.

38(2) Notwithstanding The Regulations Act, any regulation made under this section before the expiration of 12 months after this Act comes into force may be made retroactive in effect and may be made retroactive to any day before the day on which this Act comes into force.

S.M. 1982, c. 16, s. 38.

Comparution du directeur, etc., au contrôle judiciaire

39 En cas de contestation devant un juge d'une procédure, d'une ordonnance ou d'une décision du directeur, d'un agent de contrôle du loyer ou d'un jury, ledit directeur, agent de contrôle du loyer ou jury est une partie à l'instance; il a le droit de comparaître en personne ou par procureur, de produire des preuves et de présenter des arguments.

L.M. 1982, c. 16, art. 39.

Conflit avec d'autres lois

40 En cas de conflit ou de contradiction entre une disposition de la Loi sur le louage d'immeubles ou de la Loi sur les condominiums et une disposition de la présente loi, celle-ci l'emporte.

L.M. 1982, c. 16, art. 40.

Contestations sous le régime de la Loi sur le louage d'immeubles

41(1) Si un locataire s'est prévalu du paragraphe 116(4) de la Loi sur le louage d'immeubles, à l'époque où cette disposition n'était pas encore abrogée, pour contester une augmentation du loyer d'un local d'habitation exigée le 1er janvier 1982, ou avant ou après cette date, et si la contestation n'a pas été tranchée avant l'abrogation de ce paragraphe, il est mis fin à la procédure de contestation et le directeur doit se faire remettre tous les documents y relatifs; il renvoie la contestation et les documents devant un agent de contrôle du loyer qui fixe, conformément au paragraphe (3), le montant d'augmentation du loyer du local d'habitation faisant l'objet de la contestation tout comme si la contestation était une objection faite à l'augmentation de loyer, conformément à la présente loi et au règlement.

Arbitrages prévus par le paragraphe 120(7) de la Loi sur le louage d'immeubles

41(2) Si, en application du paragraphe 120(7) de la Loi sur le louage d'immeubles, à l'époque où il n'était pas encore abrogé, le ministre visé par cette loi a ordonné au directeur des arbitrages, visé par la même loi, de soumettre à l'arbitrage l'augmentation du loyer d'un local d'habitation exigée avant le 1er janvier 1982, ou avant ou après cette date, et si l'arbitrage n'a pas pris fin avant l'abrogation de ce paragraphe, il est mis fin à l'arbitrage; le directeur doit se faire remettre tous les documents y relatifs et renvoyer le litige devant un agent de contrôle du loyer qui fixe, conformément au paragraphe (3), l'augmentation du loyer du local d'habitation en cause tout comme si le litige avait été soulevé au moyen d'une objection faite à l'augmentation de loyer, conformément à la présente loi et au règlement.

Director, etc. party to review.

39 Where any proceeding, order or decision before or of the director, a rent regulation officer, or a panel is being questioned or challenged in any proceeding in a court, the director, the rent regulation officer, or the panel, as the case may be, is a party to the proceeding and is entitled to appear in person or to be represented by counsel and to submit evidence and present argument in the proceeding.

S.M. 1982, c. 16, s. 39.

Conflicts with other Acts.

40 Where a provision of this Act conflicts with or is repugnant to a provision of The Landlord and Tenant Act or The Condominium Act, the provision of this Act prevails over and supercedes the provision of The Landlord and Tenant Act or The Condominium Act, as the case may be.

S.M. 1982, c. 16, s. 40.

Protests under Landlord and Tenant Act.

41(1) Where, under subsection 116(4) of The Landlord and Tenant Act as it was before the repeal of that subsection, a tenant had protested the amount of an increase in rent for residential premises which took effect on, before or after January 1, 1982 and the protest has not been determined before the repeal of that subsection, the proceedings on the protest shall be discontinued and the director shall obtain all documents relating to the protest and refer the protest and the documents to a rent regulation officer who shall determine, in accordance with subsection (3), the amount of increase in rent for the residential premises to which the protest related as though the protest was an objection to the increase in rent made under and in complete compliance with this Act and the regulations.

Arbitrations under subsec. 120(7) of Landlord and Tenant Act.

41(2) Where, under subsection 120(7) of The Landlord and Tenant Act as it was before the repeal of that subsection, the minister under that Act had directed the Director of Arbitration under that Act to submit to arbitration an increase in rent for residential premises which took effect on, before, or after January 1, 1982, and the arbitration has not been completed before the repeal of that subsection, the arbitration shall be discontinued and the director shall obtain all the documents relating thereto and refer the matter which had been submitted to arbitration to a rent regulation officer who shall determine, in accordance with subsection (3), the increase in rent for the residential premises to which the matter related as though the matter had been raised by an objection to the increase in rent which had been made under and in complete compliance with this Act and the regulations.

Procédure d'instruction

41(3) L'agent de contrôle du loyer, saisi d'une contestation ou d'un litige qui lui a été renvoyé conformément au paragraphe (1) ou (2), fixe l'augmentation de loyer en présumant:

a) que la présente loi et tout règlement d'application entrés en vigueur en même temps que la présente loi étaient entrés en vigueur avant que l'augmentation de loyer en cause ne soit applicable et qu'ils sont demeurés en vigueur pendant tout le temps où cette augmentation de loyer devait être applicable; et

b) que l'augmentation proportionnelle autorisée par le règlement à l'entrée en vigueur de l'augmentation de loyer en cause était une augmentation proportionnelle prévue par le règlement pour l'application du présent article.

Droit d'appel

41(4) Dans le cas où un agent de contrôle du loyer fixe une augmentation de loyer conformément au présent article, sa recommandation est susceptible d'appel tout comme s'il s'agissait d'une recommandation faite sous le régime de la Partie II par un agent de contrôle du loyer saisi d'une objection à l'augmentation du loyer d'un local d'habitation.

Protestation non réglée

41(5) Aux fins du présent article, lorsqu'un tribunal, après l'entrée en vigueur de la présente loi:

a) décide que toute procédure relative à une protestation en application du paragraphe 116(4) de la Loi sur le louage d'immeubles à l'époque où cette disposition n'était pas encore abrogée est nulle et sans effet, ou casse ou rejette toute décision ou conclusion d'une médiation résultant de cette protestation; ou

b) décide que toute procédure se rapportant à un arbitrage entrepris en vertu de l'article 120 de la Loi sur le louage d'immeubles à l'époque où cette disposition n'était pas encore abrogée est nulle et sans effet, ou casse ou rejette toute sentence résultant de cet arbitrage;

la protestation ou l'arbitrage est réputé n'avoir jamais été déterminé.

L.M. 1982, c. 16, art. 41.

Procedures on matters under this section.

41(3) Where a protest or matter is referred to a rent regulation officer under subsection (1) or (2), the rent regulation officer shall proceed to determine the increase in rent as though

(a) this Act and any regulations under this Act which come into force on the coming into force of this Act, had come into force before the date that the increase in rent was to become effective and had remained in force during the whole of the period that the increase in rent was to be in effect; and

(b) the increase in rents permitted under the regulations at the time the increase in rent for the residential premises was to become effective was a percentage increase fixed by the regulations for the purposes of this section.

Right to appeal.

41(4) Where a rent regulation officer determines an increase in rent under this section, the recommendation of the rent regulation officer may be appealed as though it were a recommendation made under Part II by a rent regulation officer on an objection to an increase in rent for residential premises.

Where protest not determined.

41(5) For the purposes of this section, where, after the coming into force of this Act, a court

(a) decides that any proceedings relating to a protest made under subsection 116(4) of The Landlord and Tenant Act as it was before the repeal of that section are invalid or null and void or quashes or sets aside any determination or result of a mediation arising out of such a protest; or

(b) decides that proceedings related to any arbitration taken under section 120 of The Landlord and Tenant Act as it was before the repeal of that section are invalid or null and void or quashes or sets aside any award resulting from such an arbitration;

the protest or arbitration, as the case may be, shall be conclusively deemed not to have been determined.

S.M. 1982, c. 16, s. 41.

Codification permanente

42 La présente loi est le chapitre R84 de la Codification permanente des lois du Manitoba.

L.M. 1982, c. 16, art. 42.

Entrée en vigueur

43 La présente loi entre en vigueur à la date fixée par proclamation.

L.M. 1982, c. 16, art. 43.

REMARQUE: Cette loi est entrée en vigueur par proclamation le 1er jour d'août 1982. Voir la Gazette du Manitoba No. 30 du 24 juillet 1982, page 1249.

Imprimée par l'Imprimeur de la Reine du Manitoba

Reference in Continuing Consolidation.

42 This Act may be referred to as chapter R84 in the Continuing Consolidation of the Statutes of Manitoba.

S.M. 1982, c. 16, s. 42.

Commencement of Act.

43 This Act comes into force on a day fixed by proclamation.

S.M. 1982, c. 16, s. 43.

NOTE: This Act was proclaimed in force as of the 1st day of August, 1982; See Manitoba Gazette No. 30, July 24th, 1982, page 1249.

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LIST OF EXISTING MANITOBA REGULATIONS MADE UNDER

THE RESIDENTIAL RENT REGULATION ACT (R84)

General

155/82 as amended by 223/82; 113/83; 192/83; 251/84

Printed by the Queen's Printer for the Province of Manitoba

MANITOBA REGULATION 155/82

As amended by M.R. 223/82, 113/83, 192/83, 251/84; 136/85 & 222/85

BEING A REGULATION UNDER
THE RESIDENTIAL RENT REGULATION ACT

(Filed July 22, 1982)

1 This regulation may be cited as The Residential Rent Regulation.

2 (a) "Act" means The Residential Rent Regulation Act;

(b) "CMHC" means the Canada Mortgage and Housing Corporation;

(c) "determination" means a recommendation or decision of a rent regulation officer arising from an application made under Sections 19 or 21 of the Act or from an objection under Sections 20 or 41 of the Act, or an order of a panel arising from an appeal in respect of such applications or objections;

(d) "expense" means any cost, expenditure, or expense incurred by a landlord in respect of a rental property but does not include any budgeted, projected, or anticipated cost, expenditure or expense;

(e) "NHA" means The National Housing Act (Canada);

(f) "period" means a period of 12 consecutive months, the last day of which occurs at least 3 months and not more than 14 months immediately prior to the date on which an increase in rent for residential premises is to take effect;

(g) "rental property" means a building or complex of buildings in which are situated residential premises but where there are situated both residential and commercial premises in the building or complex of buildings does not include the commercial premises;

(h) "revenue" means the aggregate of all rents received in respect of a rental property.

3(1) The Act does not apply to

(a) nursing homes or personal care homes;

(b) student housing owned and operated by a non-profit educational institution;

(c) residential premises that are administered by or for the Government of Canada or of Manitoba or a municipality, or any agency thereof; or

(d) residential premises that are owned and operated by the council of an Indian band for the purposes of providing residential premises on the reserve land to the members of the band.

3(2) The Act, except subsections 5(1), 5(3), 17(3) and 17(4) and sections 6, 36 and 41 of the Act, does not apply to residential premises

(a) that are situated in a low rental housing project owned by a limited dividend housing company and operated under an agreement made under section 15 of NHA;

(b) that are situated in a cooperative housing project owned by a cooperative association incorporated under the laws of Canada or of any province and operated under an agreement made under sections 34.18 or 56.1 of NHA;

(c) that are funded under the Residential Rehabilitation Assistance Program administered by CMHC and that are operated under an agreement made under section 34.1 of NHA; or

(d) that are owned by a non-profit corporation and operated under an agreement made under sections 15.1 or 56.1 of NHA

to the extent that, and for the period during which the rents charged for the residential premises situated therein are fixed with the approval of CMHC.

3(3) The Act, except subsections 5(1), 5(3), 17(3) and 17(4) and sections 6, 36, and 41 of the Act, does not apply to residential premises

(a) for which the rent payable as at December 31, 1981 was equal to or greater than $700.00 per month; or

(b) for which the rent payable as at December 31, 1982 was equal to or greater than $756.00 per month; or

(c) for which the rent payable as at December 31, 1983 was equal to or greater than $756.00 per month; or

(d) for which the rent payable as at December 31, 1984 was equal to or greater than $801.00 per month; or

(e) for which the rent payable as at December 31, 1985 was equal to or greater than $837.00 per month.

En. M.R. 222/85.

4 Where there are two or more residential premises in a rental property, notice may be served by a rent regulation officer, the coordinator of appeals, or a panel, to tenants who are parties to an application, objection, appeal or proceeding under the Act

(a) by leaving the notice at the current or last known residential premises of the tenant

(i) by placing the notice under the front door of the residential premises occupied by the tenant; or

(ii) by placing the notice in the mailbox for the residential premises occupied by the tenant, or

(b) by posting notices in conspicuous public places in the rental property that is the subject of the application, objection, appeal or proceeding.

5 Whenever notice is required to be given by a rent regulation officer, the coordinator of appeals, or a panel to tenants who no longer occupy the residential premises in respect of which an application, objection, appeal or proceeding is initiated, notice may be given by publishing the notice

(a) in a Saturday edition of the Winnipeg Free Press; or

(b) in a Friday edition of the Winnipeg Sun; or

(c) where the residential premises are located outside the City of Winnipeg, in one issue of a newspaper, published weekly or more frequently, and circulated in the district where the residential premises is located.

6 For the purposes of clause (a) of subsection 16(2) of the Act, a statement of facts shall be in writing and include

(a) the forwarding address of the vacating or vacated tenant, where it is known to the landlord; and

(b) detail of the manner in which the tenant's notice to vacate was given to the landlord, but where such notice was given by the tenant in writing or confirmed by the landlord in writing a copy of the notice or confirmation shall be submitted.

7(1) For the purposes of subsection 17(1) of the Act, every notice of rent increase shall be in the form set out in Schedule A and shall contain the information required to complete the form.

7(2) For the purposes of subsection 17(4) of the Act, every notice of rent increase shall be in the form set out in Schedule B and shall contain the information required to complete the form.

8 For the purpose of section 20 of the Act every objection to a rent increase by a tenant shall be in the form set out in Schedule C and shall contain the information required to complete the form.

9 For the purpose of sections 19 and 21 of the Act every application for a rent increase shall be in the form set out in Schedule D and shall contain the information required to complete the form.

10 For the purpose of section 25 of the Act every appeal shall be in the form set out in Schedule E and shall contain the information required to complete the form.

11(1) Except as provided in the Act and this regulation, no landlord shall increase the rent payable for residential premises

(a) on or after January 1, 1982 and on or before December 31, 1982 by more than an amount equal to 9 per cent of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1982; and

(b) on or after January 1, 1983 and on or before December 31, 1983 by more than an amount equal to 8 per cent of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1983; and

(c) on or after January 1, 1984 and on or before December 31, 1984 by more than an amount equal to 6 per cent of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1984; and

(d) on or after January 1, 1985 and on or before December 31, 1985 by more than an amount equal to 4½ per cent of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1985; and

(e) on or after January 1, 1986 and on or before December 31, 1986 by more than an amount equal to 3 per cent of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1986.

En. M.R. 222/85.

11(2) The percentage amounts referred to in subsection (1) include an economic adjustment factor equal

(a) for the purpose of clause (1)(a) to 3% of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1982; and

(b) for the purpose of clause (1)(b) to 3% of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1983; and

(c) for the purpose of clause (1)(c) to 3% of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1984; and

(d) for the purpose of clause (1)(d) to 1½% of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1985; and

(e) for the purpose of clause (1)(e) to 1% of the rent paid for the residential premises for the last rental payment period immediately preceding January 1, 1986.

En. M.R. 222/85.

11(3) A landlord shall be deemed to be in compliance with subsection (1), where the amount of the rent increase has been rounded to the nearest dollar.

11(4) For the purposes of subsections (1) and (2), where no rent was paid for the residential premises for the last rental payment period immediately preceding January 1, 1982, the rent paid for the last rental payment period shall be deemed to be the rent paid for the next previous rental payment period for which rent was paid.

12(1) For the purposes of an application under sections 19 or 21 or an objection under sections 20 or 41 of the Act or an appeal in respect thereof, a landlord shall submit financial information which pertains to the rental property for a period and the next previous corresponding period, which information shall include the information required to complete the form set out in Schedule D.

12(2) Where a landlord submits information for a period under subsection (1) and in any subsequent year is required to file financial information for the purposes of an application, objection or appeal in respect of the same residential premises in that subsequent year, the financial information shall be supplied for the same period of that subsequent year as the period for which financial information was supplied under subsection (1).

12(3) Notwithstanding subsection (2), a rent regulation officer or a panel may authorize the landlord to vary the period for which financial information is supplied in respect of an application, objection or appeal in any subsequent year, where a rent regulation officer or a panel is satisfied that it is not reasonable to require the landlord to comply with subsection (2).

13(1) Subject to sections 14, 15 and 20, actual operating expenses incurred by a landlord in operating the rental property shall include

(a) the cost of advertising to acquire tenants or employees;

(b) the cost of renting, maintaining, and repairing appliances, facilities, equipment and furnishings;

(c) bank service charges;

(d) insurance premiums;

(e) rent for leasing land from which the landlord derives revenue;

(f) the costs of repair and maintenance which are not recoverable from the tenant's security deposit or any other source;

(g) management fees for the management of the rental property, or where a landlord manages his own property and does not pay any other management fees, a rent regulation officer shall allow an amount in respect of management fees equal to 5 per cent of the revenue for the period, which amount shall be in lieu of automobile, office, stationery and other similar expenses paid for or by the landlord, and salaries paid by the landlord to himself or any other person in respect of management services;

(h) realty taxes;

(i) subject to clause (g), employee wages and benefits;

(j) the cost under service contracts;

(k) utilities;

(l) corporation capital tax;

(m) health and post-secondary education tax;

(n) where a landlord provides his own personal labour for repairs and maintenance, a reasonable amount in respect thereof;

(o) professional fees;

(p) the cost of tools, equipment and parts having an individual price of $100.00 or less; and

(q) such other expenses as may be allowed by a rent regulation officer or a panel.

13(2) The increase in actual operating expenses incurred by a landlord shall be determined by deducting from the aggregate of the actual operating expenses determined under subsection (1) for the period, the aggregate of the actual operating expenses determined under subsection (1) for the next previous corresponding period, the result of which may be a positive or a negative amount.

14 A rent regulation officer or a panel shall not include in the actual operating expenses incurred by a landlord in respect of the rental property any expense or portion thereof which

(a) is not related to the normal or usual operation of the rental property;

(b) is a non-recurring or extraordinary expense;

(c) as claimed under clause (n) or (o) of subsection 13(1), is unreasonable; or

(d) is deemed to be a capital expense under section 16.

15 The following expenses shall not be considered by a rent regulation officer or a panel in determining a landlord's actual operating expenses under section 13

(a) capital cost allowance or depreciation;

(b) charitable or political donations;

(c) the costs of entertainment and promotion;

(d) fines and penalties for failure to meet any obligation imposed by contract, statute, regulation or by-law;

(e) interest;

(f) mortgage interest;

(g) reserves;

(h) income taxes; and

(i) budgeted, projected or anticipated costs.

16 For the purposes of section 19, a rent regulation officer or a panel shall consider as capital expenses, such expenses as are incurred by the landlord in the period in respect of the rental property to acquire or replace appliances facilities or furnishings, and for capital improvements and major repairs which have a lasting and long term benefit to the rental property, to the following extent

(a) One-third of the acquisition or replacement cost of

(i) curtains,

(ii) drapes,

(iii) furniture, and

(iv) exterior painting;

(b) One-quarter of the acquisition or replacement cost of

(i) air conditioning units,

(ii) carpets,

(iii) dishwashers,

(iv) dryers,

(v) garburators,

(vi) refrigerators,

(vii) stoves,

(viii) washers, and

(ix) tools, equipment and parts, having an individual price of more than one hundred dollars ($100.00);

(c) One-sixth of the cost of

(i) cablevision wiring,

(ii) electrical wiring,

(iii) heating units,

(iv) intercom systems,

(v) landscaping,

(vi) parking lot paving and expansion,

(vii) roofing,

(viii) swimming pools,

(ix) water heaters,

(x) aluminum siding,

(xi) plumbing, and

(xii) central alarm systems; and

(d) Such other items and the portion of the costs thereof as may be deemed to be a capital expense by a rent regulation officer or a panel.

17 For the purposes of section 19, a rent regulation officer or a panel shall consider the financial position of the landlord with respect to the rental property by determining for the period an amount equal to revenue, minus the aggregate of

(a) actual operating expenses as determined under section 13; and

(b) mortgage interest expense as determined under section 18.

18(1) For the purposes of determining the mortgage interest expense under section 17, a rent regulation officer or a panel shall consider the actual mortgage interest expense incurred in the period where

(a) the original amount of the mortgage

(i) did not exceed 75 per cent of the cost of construction, or

(ii) where the landlord purchased the rental property, did not exceed 75 per cent of the lesser of the purchase price or an independent appraised value acceptable to an approved lender under NHA at the time of the purchase, and providing that the purchase was a bona fide arms-length transaction, or

(iii) where subsequent to the construction or purchase of the rental property, as the case may be, there has been substantial rehabilitation or renovation thereof, did not exceed an amount equal to 75 per cent of the aggregate of the cost of the rehabilitation or renovation and the amount under subsection (i) or (ii), whichever is applicable; and

(b) the interest rate charged did not exceed the interest rate usually charged by approved lenders under NHA at the time that the mortgage agreement or any subsequent renewal thereof was executed; and

(c) any renewal of a mortgage agreement was for an amount which did not exceed the principal outstanding on the mortgage immediately prior to the execution of the renewal; and

(d) any renewal of a mortgage agreement did not provide for an amortization period which decreased the amortization period provided for in the mortgage agreement; and

(e) a landlord refinances an existing mortgage agreement the new mortgage agreement shall be deemed to be a renewal of the mortgage agreement and clauses (b), (c) and (d) apply mutatis mutandis as though the refinanced mortgage was a renewal of the mortgage agreement.

18(2) Where the terms and conditions of a mortgage or renewal thereof, or a refinancing of an existing mortgage in respect of a rental property do not meet the requirements set forth in subsection (1), a rent regulation officer or a panel shall estimate and consider the amount of mortgage interest expense for the period that would have been expended had the terms and conditions of the mortgage or renewal thereof or a refinancing of an existing mortgage met the requirements as set forth in subsection (1).

19(1) For the purposes of making a determination in respect of a rent increase which occurs prior to January 1, 1985, a rent regulation officer or a panel shall consider the aggregate of

(a) the amount determined under subsection 13(2); and

(b) the total of the capital expenses determined under section 16; and

(c) where the amount determined under section 17 is not a deficit, the revenue for the period multiplied by 3 per cent, or where the amount determined under section 17 is a deficit, the greater of one-third of the amount of the deficit or the revenue for the period multiplied by 3 per cent; and

(d) the dollar value of any change in services or amenities during the period, which amount may be a positive or negative value for the period.

En. M.R. 222/85.

19(2) For the purposes of making a determination in respect of a rent increase which occurs after December 31, 1984, and prior to January 1, 1986, a rent regulation officer or a panel shall consider the aggregate of

(a) the amount determined under subsection 13(2); and

(b) the total of the capital expenses determined under section 16; and

(c) where the amount determined under section 17 is not a deficit, the revenue for the period multiplied by 1½ per cent, or where the amount determined under section 17 is a deficit, the greater of one-third of the amount of the deficit or the revenue for the period multiplied by 1½ per cent; and

(d) the dollar value of any change in services or amenities during the period, which amount may be a positive or negative value for the period.

En. M.R. 222/85.

19(3) For the purposes of making a determination in respect of a rent increase which occurs after December 31, 1985, a rent regulation officer or a panel shall consider the aggregate of

(a) the amount determined under subsection 13(2); and

(b) the total of the capital expenses determined under section 16; and

(c) where the amount determined under section 17 is not a deficit, the revenue for the period multiplied by 1 per cent, or where the amount determined under section 17 is a deficit, the greater of one-third of the amount of the deficit or the revenue for the period multiplied by 1 per cent; and

(d) the dollar value of any change in service or amenities during the period, which amount may be a positive or negative value for the period.

En. M.R. 222/85.

20 Notwithstanding any provision of this regulation, a rent regulation officer or a panel shall disallow any expense or portion thereof which

(a) does not pertain to the rental property; or

(b) subject to section 18, is incurred as a result of a non-arm's length transaction to the extent that the expense is unreasonable.

21 For the purposes of subsection 29(6) of the Act, where a panel orders a reduction of the rent payable for residential premises, and the order requires the landlord to refund to any person who is or has been a tenant of the residential premises any rent which has been paid by the person in excess of the reduced rent, together with interest, interest shall be calculated at the rate of 10 per cent per annum compounded annually on the amount of rent paid by the tenant in excess of the reduced rent and calculated from the day that the tenant paid the amount of the excess.

22 Where a landlord makes an application under subsection 33(1) of the Act, the application shall include in addition to being accompanied by full details of the plans, a statement that the work to be completed includes improvement repairs in the following areas:

(a) (i) structure
(ii) plumbing
(iii) electrical wiring
(iv) heating, or
(v) installation of insulation and related measures to improve thermal efficiency.

(b) the estimated start date and time required to complete the rehabilitation;

(c) the estimated total cost;

(d) a copy of the certificate of title respecting the rental property;

(e) the present rents payable for all residential premises in the rental property;

(f) the estimated rents payable for all residential premises in the rental property upon completion of the rehabilitation;

(g) the names of all tenants resident in the rental property; and

(h) a statement as to the manner in which tenants in the rental property will be treated having regard to the rehabilitation.

En. M.R. 136/85.

23 In considering an application under subsection 33(1) of the Act, a panel shall consider

(a) whether or not the rehabilitation provides for improvements with respect to
(i) structure
(ii) electrical wiring
(iii) plumbing
(iv) heating, or
(v) installation of insulation and related measures to improve thermal efficiency;

(b) whether or not such improvements do, in fact substantially increase the life expectancy and the quality of the rental property and residential premises therein;

(c) whether or not the rental property is registered as a condominium under The Condominium Act;

(d) whether or not the rehabilitation is being undertaken as a result of an order of a municipal or provincial authority;

(e) the plans and information submitted therewith;

(f) any evidence or information submitted at the hearing; and

(g) such other matters as the panel deems necessary.

En. M.R. 136/85.

24 Where a landlord makes an application under subsection 33(6) of the Act, the application shall include and a panel shall consider

(a) a statement as to the extent of the work that has been completed;

(b) a financial statement detailing all monies expended with respect to the rehabilitation of the rental property and confirmation thereof; and

(c) a certificate of occupancy issued by the municipal authority indicating that the residential premises to which the application relates are approved for occupancy.

25 This regulation is retroactive and shall be deemed to have been in force on, from and after January 1, 1982.

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SCHEDULE A

NAME OF TENANT
UNIT * ADDRESS
CITY POSTAL CODE

NOM DU LOCATAIRE
LOGEMENT * ADRESSE
VILLE CODE POSTAL

Sections A B and D must be completed for all units section C must also be completed for exempt units If section A has been completed previously and filed with the Rent Regulation Bureau and shows there have been no changes since the date of last filing you may omit section A

Remplir les sections A B et D pour tous les logements remplir également la section C pour les logements qui ne sont pas régis par la Loi sur le contrôle du loyer des locaux d'habitation Si vous avez déjà rempli la section A et avez déposé les renseignements au Bureau de contrôle du loyer et s'il n'y a eu aucun changement depuis lors ne remplissez pas la section A

Notice of Increase in Rent
Avis d'augmentation de loyer

A. INFORMATION ON PREMISES (✓ where applicable)

TYPE OF BLDG
- HOUSE
- APARTMENT
- DUPLEX
- MOBILE HOME PARK
- ROOM AND BOARD HOUSE
- COMPLEX

YEAR BLDG CONSTRUCTED
NO OF FLOORS
NO OF RESIDENTIAL UNITS IN BLDG
- BACHELOR
- 1 BDR
- 2 BDR
- OTHER
- TOTAL

RENT FOR THIS UNIT INCLUDES
- HEAT
- ELECTRICITY
- WATER
- CABLE TV
- RADIO
- FURNITURE
- AIR CONDITIONING
- PARKING
- LAUNDRY
- OTHER (specify)

A. RENSEIGNEMENTS SUR LES LOCAUX (✓ where applicable)

GENRE DE BÂTIMENT
- MAISON
- APPARTEMENT
- MAISON À DEUX LOGEMENTS
- PARC POUR MAISONS MOBILES
- MAISON EN RANGÉE
- MAISON À TROIS LOGEMENTS
- AUTRE (spécifier)

ANNÉE DE CONSTRUCTION DU BÂTIMENT
NOMBRE D'ÉTAGES DU BÂTIMENT
NOMBRE DE LOGEMENTS DE LOCATION DANS LE BÂTIMENT
- STUDIO
- 1 CHAMBRE
- 2 CHAMBRES
- AUTRE
- TOTAL

LE LOYER DE CE LOGEMENT COMPREND
- CHAUFFAGE
- ÉLECTRICITÉ
- EAU
- MEUBLES
- CÂBLE
- ÉLECTRICITÉ
- EAU CHAUDE
- USAGE GRATUIT D'UNE MACHINE À LAVER
- CLIMATISATION
- AUTRE (spécifier)

B. NOTICE OF INCREASE IN RENT THE RENT FOR THE ABOVE PREMISES WILL BE INCREASED ON
DAY MONTH 19

FROM (Current Rent):	TO (Proposed Rent):
BASIC RENT $	BASIC RENT $
CHARGE FOR PARKING SPACE(S): $	CHARGE FOR PARKING SPACE(S): $
TOTAL RENT $	TOTAL RENT $

THIS IS AN INCREASE OF $ OR %
The maximum increase permitted under the regulation without approval by the Rent Regulation Bureau is %
A TENANT HAS THE RIGHT TO OBJECT TO AN INCREASE IN RENT SEE BOTTOM OF FORM

B. AVIS D'AUGMENTATION DE LOYER. LE LOYER DES LOCAUX SUSMENTIONNÉS SERA AUGMENTÉ LE
JOUR MOIS 19

DE (loyer actuel):	À (loyer proposé):
LOYER DE BASE $	LOYER DE BASE $
PRIX DU STATIONNEMENT $	PRIX DU STATIONNEMENT $
LOYER TOTAL $	LOYER TOTAL $

L'AUGMENTATION EST DE $ OU %
L'augmentation maximale prévue par le règlement sans l'autorisation du Bureau de contrôle du loyer est de %
TOUT LOCATAIRE A LE DROIT DE S'OPPOSER À L'AUGMENTATION DE SON LOYER VOIR AU BAS DE LA PAGE

C. UNITS EXEMPT FROM THE RESIDENTIAL RENT REGULATION ACT
This unit is exempt for the following reason
Rent increases on exempt units are not subject to tenant objection

C. LOGEMENTS NON RÉGIS PAR LA LOI SUR LE CONTRÔLE DU LOYER DES LOCAUX D'HABITATION
Ce logement n'est pas régi par la loi susmentionnée pour la raison suivante
Le locataire d'un logement non régi par la loi susmentionnée ne peut s'opposer à l'augmentation de loyer

D. CERTIFICATION
Legal name of landlord and address for service
I hereby certify this to be a true and correct statement
SIGNATURE OF LANDLORD OR AGENT
DATE TELEPHONE
A copy of this notice must be sent to the Rent Regulation Bureau within 14 days of service of notice on the tenant

D. ATTESTATION
Nom officiel du propriétaire et adresse de service
J'atteste que cette déclaration est conforme à la vérité
SIGNATURE DU PROPRIÉTAIRE OU DE L'AGENT
DATE TÉLÉPHONE
Veuillez envoyer une copie de cet avis au Bureau de contrôle du loyer dans les 14 jours qui suivent la présentation de l'avis au locataire

TENANT'S OBJECTION TO RENT INCREASES ON NON EXEMPT UNITS
PLEASE PRINT
I object to the increase in rent from $ to $
effective DAY MONTH 19
I moved into this unit on DAY MONTH 19
Your objection must be supported with written reasons and sent to the Rent Regulation Bureau within one (1) month of receiving the Notice of Rent Increase from your landlord
NAME
ADDRESS
CITY TOWN POSTAL CODE
TELEPHONE DATE
SIGNATURE
SEND TO
RENT REGULATION BUREAU
302 254 EDMONTON STREET
WINNIPEG MANITOBA
R3C 3Y6

OBJECTION DU LOCATAIRE À L'AUGMENTATION DU LOYER D'UN LOGEMENT RÉGI PAR LA LOI SUR LE CONTRÔLE DU LOYER
EN LETTRES MOULÉES
Je m'oppose à l'augmentation du loyer de $ à $
$ par mois à compter du JOUR MOIS 19
J'ai emménagé dans ce logement le JOUR MOIS 19
Les raisons de votre objection doivent être présentées par écrit et envoyées au Bureau de contrôle du loyer dans un délai d'un mois après réception de cet avis
NOM
ADRESSE
VILLE VILLAGE CODE POSTAL
TÉLÉPHONE DATE
SIGNATURE
À ENVOYER AU
BUREAU DE CONTRÔLE DU LOYER
302 254 RUE EDMONTON
WINNIPEG MANITOBA
R3C 3Y6

MANITOBA

TENANT'S COPY — COPIE DU LOCATAIRE

SCHEDULE B

RENT REGULATION BUREAU USE ONLY
% CHECKED
ANNIVERSARY DATE
APPLICATION FILED
PROCESSED BY

RÉSERVÉ AU BUREAU DE CONTRÔLE DU LOYER
% VÉRIFIÉ
DATE ANNIVERSAIRE
DEMANDE DÉPOSÉE
EXAMINÉ PAR

Notice to New Tenants
Avis aux nouveaux locataires

Tenant This form gives you information about rent levels for your premises Only one rent increase is allowable within a 12 month period for non-exempt premises
Landlord Sections A B C E must be completed for all new tenants section C if applicable section D must also be completed for exempt units

Locataire Ce formulaire vous donne des renseignements sur le loyer des locaux que vous louez Le loyer des locaux régis par la Loi sur le contrôle du loyer des locaux d'habitation ne peut augmenter qu'une fois en 12 mois
Propriétaire Remplir les sections A B et E pour tous les nouveaux locataires remplir aussi la section C le cas échéant et la section D pour les logements qui ne sont pas régis par la Loi sur le contrôle du loyer des locaux d'habitation

NAME OF TENANT
UNIT ADDRESS
CITY POSTAL CODE

NOM DU LOCATAIRE
LOGEMENT N° ADRESSE
VILLE CODE POSTAL

A. INFORMATION ON PREMISES
Rent for this unit includes (✓ where applicable)
- HEAT
- CABLEVISION
- AIR CONDITIONING
- PARKING
- ELECTRICITY
- FREE LAUNDRY
- FURNITURE
- OTHER (specify)
- WATER
- DISHWASHER

A. RENSEIGNEMENTS SUR LES LOCAUX
Le loyer de ce logement comprend (✓ les cases voulues)
- CHAUFFAGE
- CÂBLE
- CLIMATISATION
- STATIONNEMENT
- ÉLECTRICITÉ
- BUANDERIE À USAGE GRATUIT DANS L'IMMEUBLE
- AUTRE (spécifier)
- MEUBLES
- EAU
- LAVE-VAISSELLE

B. NOTICE OF RENT HISTORY

1 Present Rent Payable For The Premises

BASIC RENT	$
CHARGE FOR PARKING SPACE(S):	$
	$
TOTAL RENT	$

2 Present Rent Came Into Effect DAY MONTH 19

3 Rent Payable For The Premises Immediately Prior To The Date On Which Present Rent Came Into Effect

BASIC RENT	$
CHARGE FOR PARKING SPACE(S):	$
	$
TOTAL RENT	$

B. DÉTAILS SUR LE LOYER

1 Loyer actuel des locaux

LOYER DE BASE	$
PRIX DU STATIONNEMENT	$
LOYER TOTAL	$

2 Le loyer actuel est entré en vigueur le JOUR MOIS 19

1 Loyer des locaux juste avant la date d'entrée en vigueur du loyer actuel

LOYER DE BASE	$
PRIX DU STATIONNEMENT	$
LOYER TOTAL	$

C. RENT INCREASE UNDER NOTICE
This section must be completed by a landlord who has already given notice to the previous tenant to increase the rent for the premises and or by a landlord who has made application to the Rent Regulation Bureau to increase the rent for the premises

THE RENT FOR THE ABOVE PREMISES WILL BE INCREASED ON
DAY MONTH 19
TO
BASIC RENT $
CHARGE FOR PARKING SPACE(S): $
$
$
TOTAL RENT $
THIS IS AN INCREASE OF
$ OR %

C. AUGMENTATION DE LOYER PRÉVUE PAR L'AVIS
Cette section doit être remplie par tout propriétaire qui a déjà donné au locataire précédent un avis d'augmentation du loyer des locaux ou par tout propriétaire qui a déposé au Bureau de contrôle du loyer une demande d'augmentation du loyer des locaux

LE LOYER DES LOCAUX SUSMENTIONNÉS AUGMENTERA LE JOUR MOIS 19
PASSANT À
LOYER DE BASE $
PRIX DU STATIONNEMENT $
$
$
LOYER TOTAL $
L'AUGMENTATION EST DE
$ OU %

D. UNITS EXEMPT FROM THE RESIDENTIAL RENT REGULATION ACT
THIS UNIT IS EXEMPT FOR THE FOLLOWING REASON

D. LOGEMENTS NON RÉGIS PAR LA LOI SUR LE CONTRÔLE DU LOYER DES LOCAUX D'HABITATION
CE LOGEMENT N'EST PAS RÉGI PAR LA LOI SUSMENTIONNÉE POUR LA RAISON SUIVANTE

E. CERTIFICATION
LEGAL NAME OF LANDLORD AND ADDRESS FOR SERVICE
I hereby certify this to be a true and correct statement
DATE SIGNATURE OF LANDLORD OR AGENT
TELEPHONE NO
Within 14 days of the service of notice on the tenant a copy of this notice must be sent to
RENT REGULATION BUREAU
302 254 Edmonton Street
Winnipeg Manitoba
R3C 3Y6

E. ATTESTATION
NOM OFFICIEL DU PROPRIÉTAIRE ET ADRESSE DE SERVICE
J'atteste que cette déclaration est conforme à la vérité
DATE SIGNATURE DU PROPRIÉTAIRE OU DE L'AGENT
NO DE TÉL
Le propriétaire doit envoyer une copie de cet avis dans les 14 jours qui suivent sa présentation au locataire
BUREAU DE CONTRÔLE DU LOYER
302 254 rue Edmonton
Winnipeg Manitoba
R3C 3Y6

MANITOBA

TENANT'S COPY — COPIE DU LOCATAIRE

SCHEDULE C

OBJECTION TO RENT INCREASE ON NON-EXEMPT UNITS

PLEASE PRINT

I object to the increase in rent from $_____ to $_____ per month,

effective _____, 19___. I moved into this unit on
DAY MONTH

_____, 19___.
DAY MONTH

NAME _____ TELEPHONE _____

ADDRESS _____ DATE _____
STE. # STREET/AVENUE

_____ _____
CITY/TOWN POSTAL CODE SIGNATURE

Your objection must be supported with written reasons and sent to the Rent Regulation Bureau within one (1) month of receiving the notice of rent increase from your landlord.

Send To: Rent Regulation Bureau
303 — 254 Edmonton Street
Winnipeg, Manitoba
R3C 3Y4

SCHEDULE D

Application for Rent Increase
ABOVE AMOUNT PERMITTED BY REGULATION

INFORMATION ON PROPERTY: PLEASE PRINT

NAME OF PROPERTY:

ADDRESS OF PROPERTY: STREET AVENUE ROAD CITY TOWN POSTAL CODE

LEGAL NAME OF LANDLORD AGENT:

ADDRESS OF LANDLORD/AGENT: STREET AVENUE ROAD CITY TOWN POSTAL CODE

TELEPHONE

TYPE OF PROPERTY: ☑ WHERE APPLICABLE

- ○ HOUSE
- ○ ROW OR TOWNHOUSE
- ○ DUPLEX
- ○ APARTMENT BUILDING
- ○ TRIPLEX
- ○ MOBILE HOME PARK
- ○ OTHER (Specify)

YEAR OF CONSTRUCTION:

NUMBER OF FLOORS/STOREYS:

NUMBER OF SUITES IN PROPERTY:

BACHELOR STUDIO	1-BEDROOM
2-BEDROOM	3-BEDROOM
OTHER	TOTAL

NUMBER OF PARKING STALLS HEATED YES ○ NO ○

OUTDOOR	COVERED
INDOOR	TOTAL

PROPERTY FEATURES: ☑ WHERE APPLICABLE

- ○ SWIMMING POOL
- ○ SAUNA
- ○ SUNDECK
- ○ BALCONY
- ○ OTHER (Specify)
- ○ FIREPLACE
- ○ CARBURATOR
- ○ DISHWASHER
- ○ COIN LAUNDRY
- ○ GUEST PARKING
- ○ AIR CONDITIONING
  - ○ CENTRAL
  - ○ WALL
- ○ INTERCOM
- ○ ELEVATOR(S)
- ○ RESIDENT CARETAKER
- ○ STORAGE FACILITIES

SERVICES INCLUDED IN RENT: ☑ WHERE APPLICABLE

- ○ HEAT
- ○ ELECTRICITY
- ○ OTHER (Specify)
- ○ WATER
- ○ CABLEVISION
- ○ HOT WATER
- ○ LAUNDRY
- ○ AIR CONDITIONING
- ○ PARKING

This application relates to:
- ○ all rental units in the property described above; or
- ○ some of the rental units. Specify number

For each unit covered by this application, I have:
- ○ attached a copy of the Notice of Increase in Rent; or
- ○ completed page 4 of this form.

I certify all information given to be true, correct, and complete.

DATE SIGNATURE OF LANDLORD OR AGENT

MANITOBA

MG-9625

SCHEDULE D

FINANCIAL SCHEDULES (☑ Where Applicable)

1. ◯ Separate prepared income and expense statements relative to this property are attached
2. ◯ No separate prepared income and expense statements relative to this property are available
3. ◯ Other financial statements in support of this application are attached (Specify)

If you checked - 2 please use the schedule below to list your Income and Expense for this property.

INCOME AND EXPENSE STATEMENT

	12 MONTHS ENDED CURRENT PERIOD 19	12 MONTHS ENDED PREVIOUS PERIOD 19	INCREASE DECREASE
INCOME			
RENTAL INCOME			
OTHER INCOME (Specify)			
TOTAL INCOME			
EXPENSES			
PROPERTY TAXES			
GAS			
HYDRO			
WATER			
REPAIRS - MAINTENANCE			
Painting			
Plumbing			
Electrical			
SUPPLIES (Excluding Office Supplies)			
INSURANCE			
CABLEVISION			
MANAGEMENT FEE			
CARETAKER'S SALARY			
ADVERTISING			
TELEPHONE			
OTHER (Specify)			
-			
-			
-			
TOTAL EXPENSES			

NOTE:— "PERIOD OR CURRENT PERIOD" means a period of 12 consecutive months the last day of which occurs at least 3 months and not more than 14 months immediately prior to the date on which an increase in rent for residential premises is to take effect.

"PREVIOUS PERIOD" means the previous period of 12 consecutive months corresponding to the current period.

SCHEDULE D

CAPITAL EXPENDITURES

FOR CURRENT PERIOD ONLY

(Do not include any of these Costs in Income and Expense statement)

CAPITAL EXPENDITURES (Describe)	DATE OF PURCHASE OR WORK COMPLETION	TOTAL INVOICE COST

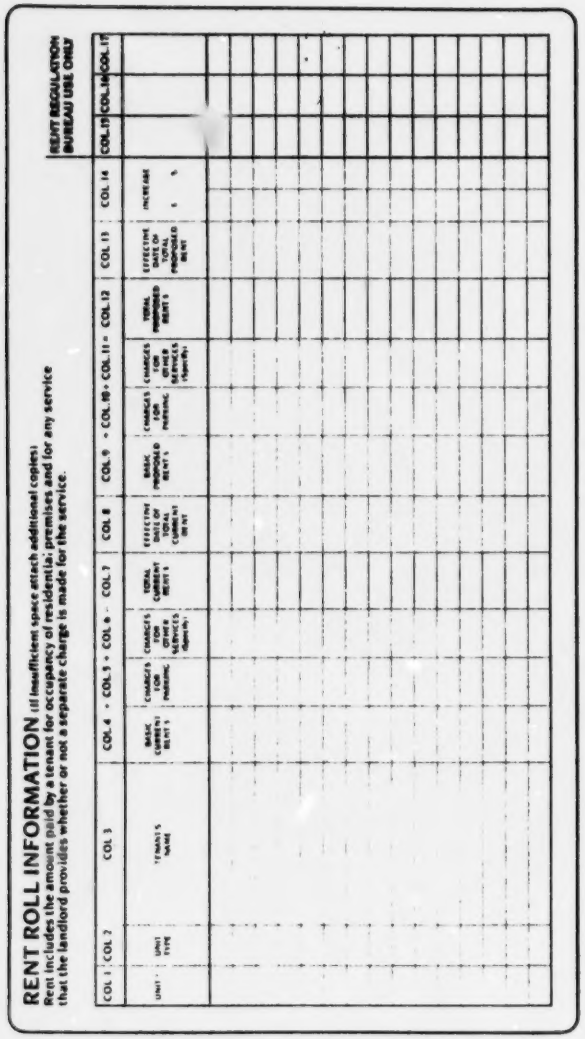
MORTGAGE DETAILS

Date of construction or purchase of rental property 19

Cost of construction or purchase of rental property $

	ORIGINAL AGREEMENT	FIRST RENEWAL	SECOND RENEWAL
1st Mortgage			
Name of Lending Institution			
Date of Agreement	19	19	19
Principal $		$	$
Interest Rate	%	%	%
Amortization	years	years	years
Term	years	years	years
Monthly Payment $		$	$
2nd Mortgage			
Name of Lending Institution			
Date of Agreement	19	19	19
Principal $		$	$
Interest Rate	%	%	%
Amortization	years	years	years
Term	years	years	years
Monthly Payment $		$	$
3rd Mortgage			
Name of Lending Institution			
Date of Agreement	19	19	19
Principal $		$	$
Interest Rate	%	%	%
Amortization	years	years	years
Term	years	years	years
Monthly Payment $		$	$

SCHEDULE D



RENT ROLL INFORMATION (If insufficient space attach additional copies)
Rent includes the amount paid by a tenant for occupancy of residential premises and for any service that the landlord provides whether or not a separate charge is made for the service.

RENT REGULATION BUREAU USE ONLY

COL 1	COL 2	COL 3	COL 4 + COL 5 + COL 6 = COL 7	COL 8	COL 9 + COL 10 + COL 11 = COL 12	COL 13	COL 14	COL 15	COL 16	COL 17
UNIT #	UNIT TYPE	TENANT'S NAME	BASIC CURRENT RENT $	CHARGES FOR PARKING	CHARGES FOR OTHER SERVICES (Specify)	TOTAL CURRENT RENT $	EFFECTIVE DATE OF TOTAL CURRENT RENT	BASIC PROPOSED RENT $	CHARGES FOR PARKING	CHARGES FOR OTHER SERVICES (Specify)	TOTAL PROPOSED RENT $	EFFECTIVE DATE OF TOTAL PROPOSED RENT	INCREASE $ %			

SEND TO: RENT REGULATION BUREAU
302-254 Edmonton St.
Winnipeg, MB R3C 3Y4

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SCHEDULE E

NOTICE OF APPEAL

PLEASE PRINT

Name of Landlord _____

_____

Address _____

_____

Name of Tenant _____

_____

Address _____

_____

I, _____, the landlord/tenant of the following premises

_____
(Building Name)

_____
(Suite #) (Street/Avenue)

_____
(City/Town) (Province) (Postal Code)

hereby appeal the recommendation of the Rent Regulation Officer, dated _____ (Day) _____ (Month), 19 __ to the Co-ordinator of Appeals.

Date _____ (Day) _____ (Month), 19 __ . _____ (Signature in Full)

A Notice of Appeal must be served on the Co-ordinator of Appeals within 14 days after the date copies of the recommendation of the Rent Regulation Officer were sent to the parties by the Rent Regulation Officer.

En. M.R. 113/83.

APPENDIX G

LANDLORD AND TENANT ACT

CHAPTER L70

AN ACT RESPECTING LANDLORDS AND TENANTS.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Short title.

1 This Act may be cited as: "The Landlord and Tenant Act".
R.S.M., c. 136, s. 1.

Definitions.

2 In this Act

(a) "crops" means the products of the soil and without limiting the generality of the foregoing includes all sorts of grain, grass, hay, hops, fruits, pulse, and other products of the soil;

(b) "landlord" includes the owner, or other person permitting occupancy of a rental unit, and his heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit and who attempts to enforce any of the rights of a landlord under a tenancy agreement under this Act, including the right to collect rent;
En. S.M. 1980, c. 60, s. 1.

(c) "minister" means a member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

(d) "residential premises" means premises used for residential purposes, including parking accommodations or mobile homes, or both, situated in a permanent mobile home park, but it does not include premises occupied for business purposes with living accommodation attached under a single lease or any premise situated on more than three acres of land unless under the tenancy agreement the tenant is restricted to the use of not more than three acres of land together with the premise;
Am. S.M. 1971, c. 35, s. 1; Am. S.M. 1977, c. 23, s. 1.

(e) "security deposit" means money in the form of cash or cheque paid or given by a tenant of residential premises to a landlord or his agent or to anyone on his behalf to be held by or for the account of the landlord as security for the payment of rent in arrears or for damage to the premises;

(f) "standing crops" means crops standing or growing on the demised premises;

(g) "tenancy agreement" means an agreement between a landlord and a tenant for possession of residential premises, whether written, oral or implied;

(h) "tenant" includes lessee, occupant, sub-tenant, under-tenant, and his or their assigns and legal representatives.

En. S.M. 1970, c. 106, s. 1; Am. S.M. 1971, c. 35, s. 1; S.M. 1977, c. 23, s. 1; S.M. 1980, c. 60, s. 1.

Method for service or giving notice, etc.

2.1(1) Where, under this Act, a notice, demand, process or other document is required to be served on or given to a person, it may be served on or given to the person

(a) by personal service on the person; or

(b) by leaving it personally with an adult on the premises at the latest address of the person known to the person required to give or serve it; or

(c) except, in the case of service required under section 70, 77, 104, or 108, by mailing it postage prepaid by registered or certified mail addressed to the person at the latest address of the person known to the person required to give or serve it.
En. S.M. 1982, c. 18, s. 1.

Substitutional service.

2.1(2) Where a person required under this Act to serve or give a notice, demand, process or other document on or to another person is unable to serve or give it in accordance with clause 1(a) or (b), and is unaware or uncertain of any recent address of the other person, the person required to serve or give the notice, demand, process or other document may apply to a judge of the county court for an order for substitutional service and the judge may, if he is satisfied that every reasonable effort has been made to serve or give the notice, demand, process or other document on or to the other person, grant an order for such substitutional service on the other person as he deems reasonable.
En. S.M. 1982, c. 18, s. 1.

PART I

LEASES AND TENANCIES
COVENANTS RUNNING WITH REVERSION

Remedies accrue to assignees of reversion.

3 All persons being grantees or assignees of the Queen, or of any person other than the Queen, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantage against the lessees, their executors, administrators, and assigns, by entry for non-payment of the rent, or for doing of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit, and remedies, by action only, for not performing of other conditions, covenants, or agreements, contained and expressed in the indentures of their leases, demises, or grants against all and every of the lessees and grantees, their executors, administrators, and assigns as the lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times.
R.S.M., c. 136, s. 3; am.
Note: Imp. Act, 32 Hen. VIII, c. 34, s. 1.

Lessee's covenants to run with reversion.

4 Rent reserved by a lease and the benefit of every covenant or provision therein contained, having reference to the subject matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other conditions therein contained shall be annexed and incident to, and shall go with, the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by any person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.
R.S.M., c. 136, s. 4.
Note: Imp. Act, 44-45 Vic., c. 41, s. 10.

Right of forfeiture before disposition.

5 The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease, extends to, and may be enforced and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable.

R.S.M., c. 136, s. 5.

Remedies apply against assigns of grantor.

6 All lessees and grantees of lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators, and assigns shall and may have like action, advantage, and remedy against all and every person who shall have any gift or grant of the Queen, or of any other persons, of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases as the same lessees or any of them, might and should have had against their lessors, and grantors, their heirs, or successors.

R.S.M., c. 136, s. 6.

Note: Imp. Act, 32 Hen. VIII, c. 34, s. 2.

Lessor's covenants to run with reversion.

7 The obligation of a covenant entered into by a lessor with reference to the subject matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to, and shall go with, that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, such obligation may be taken advantage of and enforced against any person so entitled.

R.S.M., c. 136, s. 7.

Note: Imp. Act, 44-45 Vic., c. 41, s. 11.

APPORTIONMENT OF CONDITION OF RE-ENTRY

Apportionment on severance.

8(1) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cessor in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

Note: Imp. Act, 44-45 Vic., c. 41, s. 12.

Application of.

8(2) Sections 5 and 7, and section 8, so far as it is applicable to leases not made by deed, apply only to leases made after the first day of April, 1931.

R.S.M., c. 136, s. 8.

SUB-LESSEE AND TITLE TO REVERSION

Sub-lessee cannot call for title.

9(1) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

Note: Imp. Act, 44-45 Vic., c. 41, s. 13.

Saving intention.

9(2) This section applies only if and as far as the contrary intention is not expressed in the contract, and has effect subject to the terms of the contract and to the provisions therein contained.

Am.

Application.

9(3) This section applies only to contracts made after the first day of April, 1931.

R.S.M., c. 136, s. 9; am.

DEFECTS IN LEASES MADE UNDER POWERS OF LEASING

Effect of lease where deviation from terms of power.

10 Where, in the intended exercise of any power of leasing, whether derived under a statute or under any instrument lawfully creating the power, a lease has been, or is hereafter granted which is, by reason of the non-observance or omission of some condition or restriction, or by reason of any other deviation from the terms of the power, invalid as against the person entitled, after the determination of the interest of the person granting the lease, to the reversion, or against other the person who, subject to any lease lawfully granted under the power, would have been entitled to the land comprised in the lease, the lease, in case the same was made in good faith and the lessee named therein, his heirs, executors, administrators, or assigns have entered thereunder, shall be considered a contract for a grant at the request of the lessee, his heirs, executors, administrators, or assigns of a valid lease under such power, to the like purport and effect as the invalid lease, save so far as any variation may be necessary in order to comply with the terms of the power; and all persons who would have been bound by a lease lawfully granted under the power are bound by the contract; but no lessee under any such invalid lease, his heirs, executors, administrators, or assigns, is entitled by virtue of any such contract to obtain any variation of the lease, where the persons who would have been bound by the contract are willing to confirm the lease without variation.

R.S.M., c. 136, s. 10; am.

Note: Imp. Act, 12-13 Vic., c. 26, s. 2.

What amounts to confirmation.

11 Where, upon or before the acceptance of rent under any such invalid lease, any receipt, memorandum or note in writing confirming the lease is signed by the person accepting the rent, or some other person by him thereunto lawfully authorized, the acceptance shall, as against the person so accepting the rent, be deemed a confirmation of the lease.

R.S.M., c. 136, s. 14.

Note: Imp. Act, 13-14 Vic., c. 17, s. 2.

Duty of lessee to accept confirmation.

12 Where, during the continuance of the possession taken under any such invalid lease, the person, for the time being entitled, subject to the possession, to the land comprised in the lease, or the possession or the receipt of the rent and profits thereof, is able to confirm the lease without variation the lessee, his heirs, executors, or administrators, or any person who would have been bound by the lease if the same had been valid, upon the request of the person so able to confirm the same, shall be bound to accept a confirmation accordingly; and the confirmation may be by memorandum or note in writing signed by the persons confirming and accepting, or by some other persons by them thereunto lawfully authorized; and, after confirmation and acceptance of confirmation, the lease shall be valid and shall be deemed to have had from the granting thereof the same effect as if it had been originally valid.

R.S.M., c. 136, s. 12.

Note: Imp. Act, 13-14 Vic., c. 17, s. 3.

Lease valid if grantor owner till valid lease can be granted.

13 Where a lease granted in the intended exercise of any power of leasing is invalid by reason that, at the time of the granting thereof, the person granting the same could not lawfully grant the lease, but the estate of the person in the land comprised in the lease has continued after the time when such, or the like lease, might have been granted by him in the lawful exercise of the power, the lease shall take effect and be as valid as if it had been granted at such last mentioned time, and all the provisions of sections 10 and 15 apply to every such lease.

R.S.M., c. 136, s. 13.

Note: Imp. Act, 12-13 Vic., c. 26, s. 4.

What amounts to exercise of power.

14 Where a valid power of leasing is vested in, or may be exercised by, a person granting a lease, and, by reason of the determination of the estate or interest of the person or otherwise, the lease cannot have effect and continuance according to the terms thereof independently of the power, the lease shall, for the purposes of sections 10 to 13, be deemed to be granted in the intended exercise of the power although the power is not referred to in the lease.

R.S.M., c. 136, s. 14.

Note: Imp. Act, 12-13 Vic., c. 26, s. 5.

Saving rights of lessees under covenants and lessor's right of re-entry.

15 Nothing in sections 10 to 15 extends to, prejudices or takes away any right of action, or other right or remedy to which, but for sections 10 to 14, the lessee named in any lease, his heirs, executors, administrators, or assigns would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in the lease on the part of the person granting the same, or prejudice, or take away, any right of re-entry, or other right or remedy to which, but for those sections, the person granting the lease, his heirs, executors, administrators, or assigns, or other person, for the time being entitled to the reversion expectant on the determination of the lease, would or might have been entitled for or by reason of any breach of the covenants, conditions, or provisoes contained in the lease, and on the part of the lessee, his heirs, executors, administrators, or assigns to be observed and performed.

R.S.M., c. 136, s. 15.

Note: Imp. Act, 12-13 Vic., c. 26, s. 6.

MERGER, ETC., OF REVERSIONS

Effect of surrender or merger.

16 Where the reversion expectant on a lease of land merges or is surrendered, the estate which for the time being confers, as against the tenant under the lease, the next vested right to the land shall, to the extent of and for preserving such incidence to, and obligations on, the reversion as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the lease.

R.S.M., c. 136, s. 16.

Note: Imp. Act, 8-9 Vic., c. 106, s. 9.

RIGHT OF RE-ENTRY

Right of re-entry for non-payment of rent.

17(1) In every demise, whether by parol or in writing and whenever made, unless it is otherwise agreed or provided by statute, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, remains unpaid for fifteen days after any of the days on which it ought to have been paid, although no formal demand thereof has been made, it shall be lawful for the landlord at any time thereafter, into and upon the demised premises, or any part thereof in the name of the whole, to re-enter and the same to have again, repossess and enjoy as of his former estate.

Right of re-entry where bawdy house kept.

17(2) In every such demise as aforesaid, if the tenant or any other person is convicted of keeping a disorderly house within the meaning of the Criminal Code (Canada), on the demised premises, or any part thereof, the landlord may at any time thereafter, into the demised premises, or any part thereof, re-enter and the same have again, repossess and enjoy as of his former estate.

R.S.M., c. 136, s. 17.

FORFEITURE OF LEASES

Definitions.

18(1) In this section and sections 19 to 22,

(a) "action" includes any proceedings under Part III;

(b) "lease" includes an original or derivative under-lease and a grant at a fee farm rent or securing a rent by condition and an agreement for a lease where a lessee has become entitled to have his lease granted;

Note: Imp. Act, 44-45 Vic., c. 41, s. 14, and 55-56 Vic., c. 13, s. 5.

(c) "lessee" includes an original or derivative under-lessee and the heirs, executors, administrators and assigns of a lessee and a grantee under such a grant and his heirs and assigns;

(d) "lessor" includes an original derivative under-lessor and the heirs, executors, administrators and assigns of a lessor and a grantor under such a grant and his heirs and assigns;

(e) "mining lease" means a lease for mining purposes, that is a searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith and shall include a grant or licence for mining purposes;

Note: Imp. Act, 44-45 Vic., c. 41, s. 2 (xi).

(f) "under-lease" includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

(g) "under-lessee" includes any person deriving title under or from an under-lessee.

Restrictions on and relief against forfeiture.

18(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease other than a proviso in respect of the payment of rent, shall not be enforceable, by action, entry, or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

R.S.M., c. 136, s. 18.

Note: Imp. Act, 44-45 Vic., c. 41, s. 14 (1) and 55-56 Vic., c. 13, s. 5.

Relief against forfeiture.

19(1) Where a lessor is proceeding by action or otherwise to enforce any right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action or summary application to a judge of the Court of Queen's Bench brought by himself, apply to the court for relief; and the court may grant such relief, as having regard to the proceedings and conduct of the parties under section 18 and to all the other circumstances, the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the court may deem just.

Where right of entry is under statute.

19(2) This section and section 18 apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease, or implied therein, in pursuance of the directions of a statute.

Lease until breach.

19(3) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant, shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

Proceedings stayed on payment of rent.

19(4) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the lessee, at any time before judgment, pays into court all the rent in arrear and the costs of the action as between solicitor and client, the proceedings in the action shall be forever stayed.

Lessee's position continues.

19(5) Where relief is granted under this section the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

Application of section.

19(6) This section applies to leases made either before or after the commencement of this Act and shall apply notwithstanding any stipulation to the contrary.

Exceptions.

19(7) This section does not extend

(a) to a covenant or condition against the assigning, under-letting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the lessee making an assignment for the benefit of creditors under The Assignments Act, or on the taking in execution of the lessee's interest; or

(b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

Failure to insure.

19(8) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms which the court may impose, upon the term that the insurance is effected in accordance with the covenant or condition.

R.S.M., c. 136, s. 19.

LEASES, UNDER-LEASES, AND FORFEITURE

Protection of under-leases on forfeiture.

20 Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the court, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action or summary application to a judge of the Court of Queen's Bench brought by the person for that purpose, may make an order vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in the property upon such conditions, as to execution of any deed or other document, payment of rents, costs, expenses, damages, compensation, giving security or otherwise, as the court in the circumstances of each case shall think fit; but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

R.S.M., c. 136, s. 20.

Note: Imp. Act, 55-56 Vic., c. 13, s. 4.

Parties to action for forfeiture.

21 Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it be known to the lessor that he claims such right or interest or if the instrument under which he claims is registered in the proper registry or land titles office, shall be made a party to the action.

R.S.M., c. 136, s. 21.

Licence to assign not to be withheld unreasonably.

22(1) In every lease made after the first day of April, 1931, containing a covenant, condition or agreement against assigning, under-letting, or parting with the possession, or disposing of the land or property leased without licence or consent, the covenant, condition or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that the licence or consent shall not be unreasonably withheld.

Application to court where licence withheld.

22(2) Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the County Court, upon the application of the tenant or of the assignee or sub-tenant, made by way of originating notice according to the practice of the Court of Queen's Bench, may make an order determining whether or not the licence or consent is unreasonably withheld; and, where the judge is of opinion that the licence or consent in unreasonably withheld, permitting the assignment or sub-lease to be made; and the order is the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring it, and the assignment or sub-lease is not a breach thereof.

R.S.M., c. 136, s. 22; am.

LICENCES

Restriction of effect of licence under power.

23 Where a licence to do any act which, without the licence, would create a forfeiture, or give a right to re-enter under a condition or power reserved in a lease, is given to a lessee or his assigns, every licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under-lease or other matter thereby specifically authorized to be done, but shall not prevent a proceeding for any subsequent breach unless otherwise specified in the licence; and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable by the licence, in the same manner as if no licence had been given; and the condition or right of re-entry shall be and remain in all respects as if the licence had not been given, except in respect of the particular matter authorized to be done.

R.S.M., c. 136, s. 23.

Note: Imp. Act, 22-23 Vic., c. 35, s. 1.

Restricted operation of partial licences.

24 Where in a lease there is a power or condition of re-entry on assigning or under-letting or doing any other specified act without licence, and a licence has been or is given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without licence, or has been or is given to a lessee or owner, or anyone of several lessees or owners, to assign or under-let part only of the property, or to do any other such act in respect of part only of the property, the licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares of interest in the property, or by the lessee or owner of the rest of the property, over or in respect of the shares or interest or remaining property, but the right of re-entry shall remain in full force over or in respect of the shares or interests or property not subject of the licence.

R.S.M., c. 136, s. 24.

Note: Imp. Act, 22-23 Vic., c. 35, s. 2.

WAIVER OF COVENANT

Restriction of effect of waiver.

25 Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor or his heirs, executors, administrators or assigns, is proved to have taken place in any one particular instance the actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which the waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

R.S.M., c. 136, s. 25.

Note: Imp. Act, 23-24 Vic., c. 38, s. 6.

COVENANT TO PAY TAXES

Taxes not include local improvements.

26 Unless it is otherwise specifically provided in a lease made after the first day of April, 1931, a covenant by a lessee for payment of taxes shall not be deemed to include an obligation to pay taxes assessed for local improvements.

R.S.M., c. 136, s. 26.

NOTICES TO QUIT

Notice to quit.

27 A week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, is sufficient notice to determine, respectively, a weekly or monthly tenancy.

R.S.M., c. 136, s. 27; am.

TENANT TO NOTIFY LANDLORD

Penalty for not notifying landlord.

28 Every tenant to whom a writ in an action for the recovery of land has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his landlord's bailiff or receiver; and, if he omits so to do, he is answerable to his landlord for all damages sustained by him by reason of the failure to give the notice.

R.S.M., c. 136, s. 28; am.

DISTRESS FOR RENT

Distress for three month's arrears.

29(1) No person may distrain as against the tenant or any other person for more than the next preceding three month's arrears of rent where the rent is payable quarterly or more frequently, nor for more than the next preceding one year's arrears where the rent is payable less frequently than quarterly.

Am.

Distress reasonable.

29(2) Distress shall be reasonable.

Note: 52 Hen. III, c. 4.

Distress for rents seck.

29(3) Every person may have the like remedy by distress, and by impounding and selling the property distrained in cases of rents seck, as in case of rent reserved upon lease.

R.S.M., c. 136, s. 29; am.

Note: Costs of distress dealt with by The Distress Act.

Note: Rent seck. 4 Geo. II, c. 28, s. 5.

Distress on determination.

30 A person having any rent due and in arrear, upon any lease for life or lives or for years, or at will, ended or determined, may distrain for the arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if the distress is made during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due.

R.S.M., c. 136, s. 30.

Note: 8 Anne, c. 18, s. 6 and 7.

Distress in case of death.

31 A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person whose life the rent or land depended as he might have done if the person by whose death the estate in the rent or land determined had continued in life.

R.S.M., c. 136, s. 31.

Note: 32 Hen. VIII, c. 37, s. 4.

Personal representative may distrain.

32 The executors or administrators of a landlord may distrain for the arrears of rent due to the landlord in his lifetime and may sue for the arrears in like manner as the landlord might have done if living; and the powers and provisions contained in this Act relating to distresses for rent are applicable to the distresses so made.

R.S.M., c. 136, s. 32; am.

PROPERTY LIABLE TO DISTRESS

Right to distrain grain, etc.

33 A person having rent due and in arrear upon any demise, lease, or contract may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with the rent, and may lock up or detain the same, in the place where the same is found, for or in the nature of a distress until the same is replevied, and, in default of the same being replevied, may remove and sell the same.

R.S.M., c. 136, s. 33.

Note: Imp. Act, 2 W. and M., sess. 1, c. 5, s. 3.

Right to distrain cattle, etc.

34(1) A landlord may take and seize, as a distress for arrears of rent, any cattle or livestock of his tenant feeding or pasturing upon any highway, or on any way belonging to the demised premises or any part thereof.

Right to distrain standing crops.

34(2) Subject to subsection (4), a landlord may take and seize standing crops as a distress for arrears of rent, and may cut, gather, make, cure, carry, lay up and thresh the same, when ripe, in the barns or other proper place on the demised premises, and if there is none on the demised premises then in another barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time appraise, sell or otherwise dispose of the same towards satisfaction for the rent for which the distress is made, and of the charges of the distress, appraisement and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, threshed, cured, and made and not before.

Note: Imp. Act, 11 Geo. II, c. 19. s. 8.

Notice of to tenant.

34(3) Notice of the place where the goods and chattels so distrained are lodged or deposited, shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

Satisfying such distress.

34(4) If, after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making the distress and occasioned thereby, then, upon the payment or lawful tender thereof the same and every part thereof shall cease, and the standing crops so distrained shall be delivered up to the tenant.

Note: Imp. Act, 11 Geo. II, c. 19, s. 9.

Sale of.

34(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods; and it shall not be necessary for the landlord to reap, thresh, gather or otherwise market the same.

Liability of purchaser for occupation.

34(6) Any person purchasing standing crops at the sale shall be liable for the rent of the land upon which the same are standing at the time of the sale, from that time until the same are removed, unless the rent has been paid or has been collected, by the landlord, or has been otherwise satisfied, and the rent shall as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it.

R.S.M., c. 136, s. 34.

Chattels off premises not to be distrained.

35 Save as herein otherwise provided, goods or chattels that are not at the time of the distress upon the premises in respect of which the rent distrained for is due shall not be distrained for rent.

R.S.M., c. 136, s. 35; am.

Note: 52 Hen. III, St. Marlbridge, c. 15.

Exemptions from seizure.

36(1) The following chattels are exempt from seizure under any landlord's warrant of distress, namely:

(a) The beds, bedding and bedsteads (including perambulators or cradles) in ordinary use by the debtor and his family.

(b) The necessary and ordinary wearing apparel of the debtor and his family.

(c) One cooking stove with pipes and furnishings, one other heating stove with pipes, two towels, one washbasin, one kitchen table, one tea kettle, one teapot, one saucepan, one frying pan, and for each member of the family the following, namely: one chair, one cup and saucer, one plate, one knife, one fork and one spoon.

(d) All necessary fuel, meat, fish, flour and vegetables for the ordinary consumption of the debtor and his family for thirty days.

(e) The tools, agricultural implements and necessaries used by the debtor in the practice of his trade, profession or occupation, to the value of six hundred dollars.

(f) Fifty volumes of books, the books of a professional man, one axe, one saw.

Am. S.M., 1962, c. 36, s. 1; am.

Selections of exemptions.

36(2) The person claiming the exemption shall select and point out the goods and chattels which he claims to be exempt.

Exemptions cannot be waived in leases, etc.

36(3) Every agreement in any oral or written lease to waive or abandon an exemption from seizure or a benefit, right or privilege of exemption from seizure under this Act and every arrangement, contract or bargain, oral or written, under seal or otherwise, collateral to a lease and any chattel mortgage as security for a lease, made or entered into, with or without valuable consideration, whereby an attempt is made to prevent any person from claiming any benefit, right or privilege of exemption under this Act, is void.

R.S.M., c. 136, s. 36; am.

Right to distrain limited to goods of tenant.

37 A landlord shall not distrain for rent on goods and chattels the property of any person except the tenant or person who is liable for the rent, although they are found on the premises; but this restriction does not apply,

(a) to crops or grain in favour of a person claiming title under or by virtue of an execution or attachment against the tenant; or

(b) in favour of any person whose title is derived by purchase, gift, transfer or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise; or

(c) to the interest of the tenant in any goods on the premises in the possession of the tenant under a contract for purchase or by which he may or is to become the owner thereof upon performance of any condition; or

(d) where goods have been exchanged between two tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of, or the right of distress by, the landlord; or

(e) where the property is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant, or by any other relative of his in case the other relative lives on the premises as a member of the tenant's family; or

(f) in favour of any person whose title is derived by purchase, gift, transfer or assignment, whether absolute or in trust, or by way of mortgage or otherwise, from the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant, or from any other relative of his in case the other relative lives on the premises as a member of the tenant's family.

R.S.M., c. 136, s. 37; am.

Mortgagee or vendor not to distrain goods of tenant exempt from execution.

38(1) The right of a mortgagee of land or of a vendor of land, with or without chattels, under an agreement of sale, or the assigns of either, to distrain under this Act or otherwise for an amount payable under the mortgage or agreement of sale, is notwithstanding anything to the contrary in the mortgage or agreement of sale or in any other agreement relating thereto, limited (except as in this section otherwise provided) to the goods and chattels of the mortgagor or purchaser, and is also limited to such goods and chattels as are not exempt from seizure under execution; but no grain shall be exempt by reason of being grown on exempt land.

Am.

Mortgagee or vendor may serve notice and recover rent or rental value.

38(2) In addition to, or concurrently with, the exercise of any other remedy a mortgagee or vendor by a notice in writing served upon the tenant or other person occupying the land may require the tenant or occupant to pay him, in the case of a tenant, the rent, or in the case of an occupant not a tenant, the rental value of the land or so much thereof in either case as has not already been paid and to continue to pay it from time to time as it falls due to the extent, and to be applied on account, of

(a) the interest due, and all taxes or levies and premiums of insurance payable by the mortgagor or purchaser under the mortgage or agreement of sale; and

(b) all moneys which the mortgagee or vendor has paid upon or in respect of a prior mortgage or charge upon the land and for the payment of which the mortgagor or purchaser is liable;

and subject to the exemptions from seizure provided in this section, the rent or rental value may be recovered by the mortgagee or vendor serving the notice, from the tenant or occupant, in the same manner, and with the same rights, as if the relation of landlord and tenant existed between the mortgagee or vendor and the tenant or occupant.

Consent of prior mortgagees.

38(3) A mortgagee or vendor may exercise the rights conferred by subsection (2) only with the previous consent in writing of all prior mortgagees and vendors or in the absence of that consent only while no such prior mortgagee or vendor is exercising his rights to recover the rent or rental value.

Determination and settlement of disputes as to rental value.

38(4) The amount and periods for payment of the rental value claimed by such a mortgagee or vendor and the time of payment thereof shall be specified in the notice served on the occupant, and the amount shall be the fair rental value of the premises, and the periods for payment, in default of an agreement to the contrary in pursuance of which the occupant has possession of the premises, shall be in accordance with the usual practice relating to premises of a similar nature; and in case the occupant disputes the amount claimed or the period for, or time of, payment thereof, he may apply, and whether disputed or not the mortgagee or vendor may apply, to a County Court judge under Part II, and that Part shall apply, mutatis mutandis, to the settlement of disputes or to the determination of any question relating to rental value between mortgagees or vendors and occupants of land.

Mortgagee accountable for receipts.

38(5) No mortgagee or vendor shall, when acting under this section, be held accountable for any rent or money claimed as rental value not actually received by him, but all moneys received by him shall be pro tanto satisfaction of the rent or other sums owing by the tenant or occupant.

Application of section.

38(6) This section applies to the personal representatives, successors and assigns of a mortgagee or vendor, and applies in the case of any mortgage or agreement of sale made before or after the coming into force of the Revised Statutes; but nothing in this section affects any pending litigation.

R.S.M., c. 136, s. 38.

TENANT'S RIGHT OF SET-OFF

Right of set-off.

39(1) A tenant may set-off against the rent due a debt due to him by the landlord, in which case he shall give notice of the claim or set-off in Form 1 in the Schedule, which may be given before or after the seizure.

Effect of notice.

39(2) When the notice is given the landlord is entitled to distrain, or to proceed with the distress, only for the balance of the rent after deducting any debt justly due by him to the tenant which is mentioned in the notice.

Am.

Service of notice.

39(3) The notice may be served either personally or by leaving it with a grown-up person in, and apparently residing on, the premises occupied by the person to be served; and if the landlord cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of the notice on some conspicuous part of the premises is good service.

Am.

Defects not to invalidate.

39(4) No proceeding under this section is rendered invalid by any defect in form.

Am. R.S.M., c. 136, s. 39; am.

FRAUDULENT REMOVAL

Landlords may distrain goods carried off for thirty days.

40(1) Where any tenant, for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is reserved, due, or made payable, fraudulently or clandestinely conveys away, or carries off or from the premises his goods or chattels to prevent the landlord from distraining the same for arrears of rent so reserved, due or made payable, the landlord or any person by him for that purpose lawfully empowered, may, within thirty days next ensuing the conveying away or carrying off, take and seize such goods and chattels wherever the same are found, as a distress for the arrears of rent, and the same sell or otherwise dispose of in such manner as if the goods and chattels had actually been distrained by the landlord upon the premises for the arrears of rent.

Note: Imp. Act, 11 Geo. II, c. 19, s. 1.

Exemptions.

40(2) No landlord or other person entitled to the arrears of rent shall take or seize, as a distress for the same, any such goods or chattels which have been sold in good faith and for a valuable consideration, before the seizure made, to any person not privy to such fraud.

R.S.M., c. 136, s.40.

Right of landlord to break open buildings, etc.

41 Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant, or agent, or other person aiding or assisting therein are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened or otherwise secured so as to prevent them from being taken and seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, the goods and chattels, first calling to his assistance a constable or peace officer who is hereby required to aid and assist therein, and, in case of a dwelling-house, oath being also first made of a reasonable ground to believe that the goods or chattels are therein, and in the day time, break open and enter into the house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent as he might have done if they were in an open field or place upon the premises from which they were so conveyed or carried away.

R.S.M., c. 136, s. 41.

Note: Imp. Act, 11 Geo II, c. 19, s. 7.

Penalty for fraudulent removal.

42 If a tenant so fraudulently removes, conveys away or carries off his goods or chattels, or if any person wilfully and knowingly aids or assists him in so doing, or in concealing the same, every person so offending shall forfeit and pay to the landlord double the value of the goods, to be recovered by action in any court of competent jurisdiction.

R.S.M., c. 136, s. 42.

Note: Imp. Act, 11 Geo. II, c. 19, s. 8.

IMPOUNDING DISTRESS

Beasts distrained.

43(1) Beasts or cattle distrained shall not be removed or driven out of the municipality in which they are distrained.

Separate impoundment.

43(2) No cattle, or other goods or chattels, distrained or taken by way of distress for any cause at one time shall be impounded in several places.

Note: 3 Edw. I, (St. of Westminster Prim.), c. 16 and 1 P. and M. c. 12, s. 1

Note: Impounding 1 P. and M. c. 19, s. 1.

Penalty.

43(3) Every person offending against this section shall forfeit to the person aggrieved twenty dollars in addition to the damages sustained by him.

Where goods to be impounded.

43(4) Any person lawfully taking any distress for any kind of rent may impound, or otherwise secure the distress so made, in such place or on such part of the premises chargeable with the rent as is most fit and convenient for that purpose, and may appraise, sell and dispose of the same upon the premises; and it shall be lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured, to view, appraise and buy, and to carry off or remove the same on account of the purchaser thereof.

R.S.M., c. 136, s. 43.

Note: Imp. Act, 11 Geo. II, c. 19, s. 10.

POUND BREACH, OR RESCUE

Damages for pound breach.

44 Upon any pound breach or rescue of goods or chattels distrained for rent the person offending, or the owner of the goods distrained, in case the same are afterwards found to have come to his use or possession, shall forfeit to the person aggrieved twenty dollars in addition to the damages sustained by him.

R.S.M., c. 136, s. 44.

Note: Imp. Act, 2 W. and M., sess. 1, c. 5, s. 4.

SALE OF GOODS DISTRAINED

Sale of distress when made.

45 Where any goods or chattels are distrained for any rent reserved and due upon any demise, lease or contract, and the tenant or owner of them does not, within five days next after the distress taken and notice thereof with the cause of the taking, left at the dwelling house or other most conspicuous place on the premises charged with the rent distrained for, replevy the same, then, after the distress and notice and the expiration of the five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn to appraise the same truly, according to the best of their understandings, a memorandum of which oath is to be endorsed on the inventory, and after the appraisement the person so distraining may lawfully sell the goods and chattels so distrained for the best price which can be got for the same towards satisfaction of the rent for which the same were distrained and of the charges of the distress, appraisement and sale, and shall hold the over-plus, if any, for the owner's use and pay the same over to him on demand.

R.S.M., c. 136, s. 45.

Note: Imp. Act, 2 W. and M., sess. 1, c. 5, s. 1.

RIGHT OF LANDLORD ON TENANT'S BANKRUPTCY

Lien of landlord in bankruptcy.

46(1) In case of an assignment for the general benefit of creditors, or an order being made for the winding-up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, the preferential lien of the landlord for rent is restricted to the arrears of rent due during the period of three months next preceding, and for three months following the execution of the assignment, and from thence so long as the assignee retains possession of the premises; but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, liquidator or trustee for the period of his occupation.

Am.

Rights of assignee.

46(2) Notwithstanding any provision, stipulation, or agreement, in any lease or agreement or the legal effect thereof, in case of an assignment for the general benefit of creditors, or an order being made for the winding-up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, the assignee, liquidator or trustee may, at any time within three months thereafter, for the purposes of the trust estate and before he has given notice of intention to surrender possession or disclaim, by notice in writing, elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by the lease or agreement; and he may upon payment to the landlord of all arrears of rent assign the lease with rights of renewal, if any, to any person,

(a) who covenants to observe and perform its terms and agrees to conduct upon the demised premises a trade or business that is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor; and

(b) who on application of the assignee, liquidator or trustees, is approved by a judge of the Court of Queen's Bench as a person fit and proper to be put in possession of the leased premises.

Am. R.S.M., c. 136, s. 46; am.

Election of assignee to surrender.

47(1) The assignee, liquidator or trustee has the further right, at any time before so electing, by notice in writing to the landlord, to surrender possession or disclaim any such lease; and his entry into possession of the leased premises and the occupation thereof by him, while required for the purposes of the trust estate, shall not be deemed to be evidence of an intention on his part to elect to retain possession under section 46.

Right of sub-tenants.

47(2) Where the assignor, or the person or firm or corporation against whom a receiving order has been made in bankruptcy, or a winding-up order has been made, being a lessee, has, before the making of the assignment or order, demised by way of under-lease, approved or consented to in writing by the

landlord, any premises and the assignee, liquidator or trustee surrenders, disclaims or elects to assign the lease, the under-lessee shall, if he so elects in writing within three months of the assignment or order, stand in the same position with the landlord as though he were a direct lessee from the landlord, but subject, except as to rental payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent company was subject to under the lease at the date of the assignment or order.

Rental from under-lessee.

47(3) The under-lessee shall, in that event, be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the debtor, and if the last mentioned rental was greater than that payable by the debtor to the landlord the under-lessee shall be required to covenant to pay to the landlord the like greater rental.

Settlement of dispute.

47(4) Where a dispute arises under this section, it shall be disposed of, upon a summary application, by a judge of the Court of Queen's Bench.

R.S.M., c. 136, s. 47; am.

Note: No distress against trader making an assignment, etc. - See sec. 8 of The Distress Act.

DISTRAINABLE GOODS TAKEN IN EXECUTION

Goods taken in execution subject to rent.

48(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will or otherwise shall not be liable to be taken by virtue of any execution on any pretence whatsoever unless the party at whose suit the execution is sued out before the removal of the goods or chattels from the premises by virtue of the execution, pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of the goods or chattels by virtue of the execution if the arrears of rent do not amount to more than three months' arrears of rent when the rent is payable quarterly or more frequently, or to more than one year's arrears when the rent is payable less frequently than quarterly.

Am.

Note: Imp. Act, 8 Anne, c. 18 (c. 14 Ruffhead), s. 1.

When execution can proceed.

48(2) If the arrears exceed three months' rent, when the rent is payable quarterly or more frequently or one year's rent when the rent is payable less frequently than quarterly the party at whose suit the execution is sued out, on paying the landlord or his bailiff the three months' arrears in cases when the rent is payable quarterly or more frequently or the one year's rent in other cases, may proceed to execute his judgment.

Payment to execution creditor.

48(3) The sheriff or other officer shall levy and pay to the execution creditor the money so paid for rent in addition to the execution money.

R.S.M., c. 136, s. 48; am.

Crops seized while on land liable for rent.

49 Where all or any part of the standing crops of the tenant of any land is seized and sold by any sheriff or other officer by virtue of any writ of execution the crops, so long as the same remain on the land in default of sufficient distress of the goods and chattels of the tenant, shall be liable for the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of the rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of the crop by any such sheriff or other officer.

R.S.M., c. 136, s. 49.

Note: Imp. Act, 14-15 Vic., c. 25, s. 2.

WRONGFUL OR IRREGULAR DISTRESS

Irregularities not to void distress.

50 Where any distress is made for any kind of rent justly due, and any irregularity is afterwards done by the person distraining, or by his agent, or if there has been an omission to make the appraisement under oath, the distress itself shall not be therefor deemed to be unlawful, nor the person making it deemed a trespasser ab initio, but the person aggrieved by the irregularity may recover by action full satisfaction for the special damage sustained thereby.

R.S.M., c. 136, s. 50.

Note: Imp. Act, 11 Geo. II, c. 19, s. 19.

Damages for wrongful distress.

51(1) A distrainer who takes an excessive distress, or takes a distress wrongfully, shall be liable in damages to the owner of the goods or chattels distrained.

Note: 52 Hen. III, c. 4. 3 Edw. I, c. 16.

Where no rent due.

51(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right the distress is taken, the owner of the goods or chattels distrained and sold, his executors or administrators shall be entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale.

R.S.M., c. 136, s. 51.

Note: Imp. Act, 2 W. and M., sess. 1, c. 5, s. 5.

LIABILITY OF TENANTS OVERHOLDING

Penalty double value for overholding.

52 Where a tenant for any term for life, lives, or years, or other person who comes into possession of any land, by, from, or under, or by collusion with, the tenant, wilfully holds over the land or any part thereof after the determination of the term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of the land belongs or his agent thereunto lawfully authorized, the tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to the person or his assigns at the rate of double the yearly value of the land so detained for so long as the same is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there shall be no relief.

R.S.M., c. 136, s. 52.

Note: Imp. Act, 4 Geo. II, c. 28, s. 1.

Double rent where notice to quit.

53 Where a tenant gives notice of his intention to quit the premises by him holden at a time mentioned in the notice, and does not accordingly deliver up the possession thereof at the time mentioned in the notice the tenant shall from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid, to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum before giving the notice could be levied, sued for, or recovered; and the double rent or sum shall continue to be paid while the tenant continues in possession.

R.S.M., c. 136, s. 53.

Note: Imp. Act, 11 Geo. II, c. 19, s. 18.

ATTORNMENT

Agreement to attorn in mortgage valid.

54(1) Where a mortgagor of land or a purchaser of land, with or without chattels, agrees in writing either in the mortgage or agreement of sale or by a collateral or subsequent writing to attorn, or to be or become the tenant of the mortgagee or vendor of the land, as the case may be, the relationship of landlord and tenant shall be held to be validly constituted between the parties for all purposes and against all persons whomsoever.

Effect of.

54(2) Such an agreement in writing does not, nor does the receipt of rent falling due thereunder, render the mortgagee or vendor accountable for any rent not actually received by him.

Am.

Application.

54(3) Nothing in this section affects the rights of any parties in an action or proceeding pending on the first day of April, 1931.

R.S.M., c. 136, s. 54; am.

Nullity of attornment to stranger.

55(1) Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord shall be void, and the possession of his landlord shall not be deemed to be changed, altered or affected by the attornment; but nothing herein vacates or affects an attornment made

(a) pursuant to and in consequence of a judgment or order of a court; or

(b) with the privity and consent of the landlord.

Note: Imp. Act, 11 Geo. II, c. 19, s. 11.

Mortgages excepted.

55(2) Nothing herein alters, prejudices, or affects any rights which a vendor, mortgagee or encumbrancee may now possess under any law or statute

R.S.M., c. 136, s. 55.

Attornment not necessary.

56(1) Every grant or conveyance of any rent or of the reversion or remainder of any land shall be good and effectual without any attornment of the tenant of the land out of which the rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

Note: Imp. Act, 4-5 Anne, c. 3, (Ruffhead c. 16), s. 9.

Tenant not to be prejudiced.

56(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of the grant by the grantee.

R.S.M., c. 136, s. 56.

Note: St. of Anne, s. 10.

RENEWALS OR LEASES

Chief leases renewed without surrender of under-leases.

57(1) Where a lease is duly surrendered in order to be renewed, and a new lease is made and executed by the chief landlord, the new lease shall, without a surrender of all or any of the under-leases, be as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of the new lease.

Note: Imp. Act, 4 Geo. II, c. 28, s. 6.

Rights of parties thereunder.

57(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of the new lease, shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised as if the original lease had been kept on foot and continued; and the chief landlord shall have and be entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under-leases for the rents and duties reserved by the new lease, so far as the same do not exceed the rents and duties

reserved in the lease out of which the under-lease was derived, as he would have had if the former lease had been still continued or as he would have had if the respective under-leases had been renewed under the new principal lease.

R.S.M., c. 136, s. 57.

RENEWAL OF LEASE BY ABSENTEES

Renewal on order of court in case of absentees.

58(1) Where any person who, in pursuance of any covenant or agreement in writing, if within Manitoba and amenable to the process of the Court of Queen's Bench, might be compelled to execute any lease by way of renewal, is not within Manitoba, or is not amenable to the process of the court, the court, on the motion of any person entitled to the renewal, whether the person is or is not under any disability, may direct such person as the court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease, and to make and execute a new lease in the name of the person who ought to have renewed the same.

Note: Imp. Act, 11 Geo. IV, and 1 Wm. IV, c. 65, s. 18.

Validity of.

58(2) A new lease executed by the person so appointed shall be as valid as if the person in whose name the same was made was alive and not under any disability and had himself executed it.

Direction to bring action.

58(3) In every such case it shall be in the discretion of the court to direct an action to be brought to establish the right of the person seeking renewal and not to make the order for the new lease unless by the judgment to be made in the action or until after it has been entered.

Conditions of.

58(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant, or agreement, unless the sum or sums of money, if any, which ought to be paid on the renewal and the things, if any, which ought to be performed in pursuance of the covenant or agreement by the tenant are first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

Note: Imp. Act, s. 20.

Payments for to be disposed of by court.

58(5) All sums of money which are had, received, or paid for, or on account of, the renewal of any lease by any person out of Manitoba or not amenable to the process of the Court of Queen's Bench after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the Court of Queen's Bench to such account, and be applied and disposed of as the court shall direct.

Note: Imp. Act, s. 21.

Costs.

58(6) The court may order the costs and expenses of and relating to the application, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which the same are respectively made, in such manner as the court shall deem proper.

R.S.M., c. 136, s. 58.

Note: Imp. Act, s. 35.

PART II

DISPUTES AS TO RIGHT TO DISTRAIN

Definition of "judge".

59 In this Part "judge" means a judge of the County Court district in which a distress to which this Part applies is made.

R.S.M., c. 136, s. 59.

Disputes as to distress.

60(1) Where goods or chattels are distrained by a landlord for arrears of rent, and the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, or the tenant claims to set-off against the rent a debt which the landlord disputes, the landlord or the tenant may apply to the judge to determine the matters so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just.

Application to judge.

60(2) Where the tenant disputes the right of the landlord to distrain in respect of the whole or any part of the goods or chattels, or disputes the amount claimed by the landlord, the landlord or the tenant may before any distress has been made apply to the judge to determine the matter so in dispute, and the judge may hear and determine the same in a summary way, and may make such order in the premises as he may deem just.

R.S.M., c. 136, s. 60.

Order pending determination.

61 Where notice of such an application has been given to the landlord or tenant, as the case may be, the judge, pending the disposition of it by him, may make such order as he may deem just

(a) for the restoration to the tenant of the whole or any part of the goods or chattels distrained, or preventing a distress being made, upon the tenant giving security, by payment into court or otherwise as the judge may direct; or

(b) for the payment of the rent which shall be found due to the landlord and for the costs of the distress and of the proceedings before the judge and of any appeal from his order, or such of them as the tenant may be ordered to pay.

R.S.M., c. 136, s. 61.

Jurisdiction of judge.

62 The judge has jurisdiction and authority to determine any question arising upon the application that the court of which he is judge has jurisdiction to determine in an action brought in that court.

R.S.M., c. 136, s. 62; am.

Section **63** and **64** Repealed, S.M. 1976, c. 69, s. 30.

Judgment final.

65 Where the amount claimed by the landlord does not exceed one hundred dollars the decision of the judge is final.

R.S.M., c. 136, s. 65; am.

Appeal from summary trial.

66 Where the amount claimed by the landlord exceeds one hundred dollars, an appeal lies from any order of the judge, made on an application to him under section 60, by which the matters in dispute are determined, in like manner as if they were a judgment of the court of which he is judge pronounced in an action.

R.S.M., c. 136, s. 66; am.

Appeal from trial.

67 Where an issue is tried there is the same right of appeal from the judgment as if the judgment had been pronounced in an action.

R.S.M., c. 136, s. 67; am.

68 Repealed by S.M. 1976, c. 69, s. 30.

Other remedies preserved.

69 Nothing in this Part takes away or affects any remedy that a tenant may have against his landlord or requires a tenant to proceed under this Part instead of by bringing an action; but where, instead of proceeding under this Part, he proceeds by action, the court in which the action is brought, if of opinion that it was unnecessarily brought and that a complete remedy might have been had by a proceeding under this Part, may direct the tenant, although he succeeds, to pay any additional costs occasioned by his having brought the action.

R.S.M., c. 136, s. 69; am.

PART III

OVERHOLDING TENANTS, PROCEEDINGS AGAINST

Application to judge for writ of possession.

70(1) Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects upon demand made in writing to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply to a County Court judge of the County Court district in which the demised premises are wholly or partly situated, whether in term or in vacation and wherever the judge may be, to make the inquiry hereinafter provided for.

Am. S.M. 1982, c. 18, s. 2.

Material required.

70(2) The landlord shall

(a) set forth, on affidavit, the terms of the demise or right of occupation, if oral;

(b) annex a copy of the instrument creating or containing the demise or right of occupation, if in writing, or, if for any cause a copy cannot be so annexed, then he shall make a statement setting forth the terms of the demise or occupation and the reason why the copy cannot be annexed;

(c) annex a copy of the demand;

(d) state the refusal of the tenant to go out of possession, and the reasons given for the refusal, if any were given; and

(e) add such explanation in regard to the ground of such refusal as the truth of the case may require.

Am.

Inquiry and determination.

70(3) The judge shall, in writing, appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period that has expired, or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession.

Notice of proceedings.

70(4) The application under subsection (1) together with a copy of the judge's appointment, a copy of the affidavit required under subsection (2) and copies of other documents to be used on the application, shall be served on the tenant at least 5 days before the day appointed by the judge for the inquiry into the matter.

En. S.M. 1982, c. 18, s. 3.
R.S.M., c. 136, s. 70; am.; Am. S.M. 1982, c. 18, ss. 2 & 3.

County Court judge may refer.

71 A County Court judge may, upon any such application being made to him, or at any time thereafter pending the proceedings, having regard to the convenience of the parties, the costs of the proceedings and other considerations, and subject to such conditions as may to him seem just, direct that the case be referred to a judge of the Court of Queen's Bench to be heard and determined.

R.S.M., c. 136, s. 71.

Queen's Bench rules apply.

72 Except as otherwise varied by this Part, The Queen's Bench Act applies to applications made and proceedings had under this Part.

R.S.M., c. 136, s. 72.

Intituling proceedings.

73 The proceedings under this Part shall be intituled in the court in which taken and shall be styled:

"In the matter of (giving the name of the party complaining), landlord, against (giving the name of the party complained against), tenant".

R.S.M., c. 136, s. 73.

Procedure on default.

74(1) Where, at the time and place appointed, the tenant fails to appear, the judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession in Form 2 in the Schedule, directed to a sheriff, commanding him forthwith to place the landlord in possession of the land.

Am. S.M. 1982-83-84, c. 85, s. 30(1).

On appearance.

74(2) Where the tenant appears, the judge shall, in a summary manner, hear the parties and their witnesses and examine into the matter; and if it appears to the judge that the tenant wrongfully holds against the right of the landlord he may order the issue of the writ.

Proceedings court records.

74(3) Such proceedings shall be transmitted to, and form part of the records of, the Court of Queen's Bench or the proper County Court, as the case may be.

R.S.M., c. 136, s. 74.
Am. S.M. 1982-83-84, c. 85, s. 30(1).

Power to amend.

75 The judge has the same power to amend or excuse irregularities in the proceedings as he would have in an action.

R.S.M., c. 136, s. 75; am.

Appeal from order.

76(1) An appeal lies to The Court of Appeal from the order of the judge granting or refusing a writ of possession; and the provisions of The Queen's Bench Act and The County Courts Act as to appeals apply, respectively, to the appeal.

Discharging order for possession.

76(2) Where The Court of Appeal is of opinion that the right to possession should not be determined in a proceeding under this Part, the court may discharge the order of the judge, and the landlord may in that case proceed by action for the recovery of possession.

Possession restored.

76(3) When the order is discharged, if possession has been given to the landlord under a writ of possession, the court may direct that possession be restored to the tenant.

R.S.M., c. 136, s. 76.

SUMMARY PROCEEDINGS FOR NON-PAYMENT OF RENT

Application for possession on failure to pay rent.

77(1) If a tenant fails to pay his rent within 3 days after the time agreed upon, and wrongfully refuses or neglects upon demand made in writing and served upon him to pay the rent or to deliver up the premises demised, the landlord may apply to a judge of the county court of the county court district in which the premises are situated for an order for eviction of the tenant from the premises.

En. S.M. 1982, c. 18, s. 4.

Application of subsec. (2), (3) and (4) to application.

77(2) Subsections 70(2), (3) and (4) apply mutatis mutandis to an application made under subsection (1).

En. S.M. 1982, c. 18, s. 4.

Hearings.

77(3) At the time and place appointed for the inquiry and the determination of the application under subsection (1) the judge of the court or in his absence from that place, a magistrate, shall hear the evidence adduced upon oath and may make such order, either to confirm the tenant in possession or to deliver up possession to the landlord, as the facts of the case may warrant, and the order may be in Form 4 in the Schedule.

En. S.M. 1982, c. 18, s. 4; Am. S.M. 1982-83-84, c. 74, s. 1.

Enforcing order for possession.

77(4) Where the order is made for the tenant to deliver up possession and he refuses, a bailiff of the County Court shall, with such assistance as he may require, forthwith proceed, under the order, to eject and remove the tenant, together with all goods and chattels that he may have on or about the premises, and make the rent in arrear and place the landlord in possession of the premises.

Am.

Payment of rent a stay.

77(5) Where a tenant, before the execution of the order, pays the rent in arrear and all costs, the proceedings shall be stayed and the tenant may continue in possession as of his former tenancy.

In case of vacancy, the procedure.

77(6) Where the premises in question are vacant, or the tenant is not found in possession, or if in possession and he refuses, on demand made in the presence of a witness, to admit the bailiff, the latter, after a reasonable time has been allowed to the tenant or person in possession to comply with the demand for admittance, may force open any outer door in order to gain an entrance, and may also force any inner door, for the purpose of ejecting the tenant or occupant and giving proper possession of the premises to the landlord or his agent.

R.S.M., c. 136, s. 77; am; Am. S.M. 1982, c. 18, s. 4; S.M. 1982-83-84, c. 74, s. 1.

Costs.

78 The judge or magistrate may award such costs as he sees fit, and as the circumstances of the case warrant, to the landlord or the tenant, as the case may be; and those costs, if payable by the tenant, may be added to the costs of the levy for rent, if any such is or is to be made, or in any case, may be recovered by action against the landlord or tenant in the court having jurisdiction.

R.S.M., c. 136, s. 78; am.

Order by court for money payments.

79(1) Where, in any proceedings before him under this Act, a judge of a County Court finds that any net amount is due from any party to the proceedings to any other party thereto after making allowance for any amount to be due from that other party to the party first mentioned, the judge may make an order for the payment of the net amount so found by the party by whom it is payable, together with the costs, if any, payable by him as fixed by the judge.

Am. S.M. 1976, c. 69, s. 30.

Order a judgment of court.

79(2) Every order made under subsection (1) may be filed in the office of the court, and when so filed it shall be conclusively deemed to be, for all purposes, a judgment of the County Court and enforceable as such.

En. S.M., 1960, c. 30, s. 3; Am. S.M. 1976, c. 69, s. 30.

Distraint of farm property abolished.

80 Notwithstanding anything contained in this or any other Act of the Legislature, any provision in any contract or any principle of common law, no landlord shall distrain for default in payment of rent by a tenant of farm property.

En. S.M. 1970, c. 106, s. 2.

Provisions of Part IV to prevail.

81 The provisions of Parts I, II, and III to the extent that they apply to tenancies of residential premises are subject to the provisions of Part IV but where there is a conflict between any provision of Part I, II or III and the provisions of Part IV, the provisions in Part IV prevail.

En. S.M. 1970, c. 106, s. 2; Am. S.M. 1977, c. 23; s. 2; Am. S.M. 1978, c. 49, s. 60.

PART IV

Application of Part IV.

82(1) Except as specifically provided in this Part, this Part applies to tenancies of residential premises and tenancy agreements notwithstanding any other Act or Parts I, II or III of this Act or any agreement or waiver to the contrary entered into or renewed before and subsisting when this Part comes into force or entered into after this Part comes into force.

En. S.M. 1970, c. 106, s. 3.

Application to Crown.

82(2) Part IV of this Act applies to the crown and to crown agencies and corporations.

En. S.M. 1977, c. 23, s. 3.
En. S.M. 1970, c. 106, s. 3; Am. S.M. 1977, c. 23, s. 3.

Definition of "rent".

82.1 In this Part, "rent" includes any amount paid or given by or on behalf of a tenant as consideration for occupancy of residential premises or for any service, privilege, accommodation or thing that the landlord provided or grants to or for the tenant whether or not a separate charge is made for the service, privilege accommodation or thing.

En. S.M. 1982, c. 18, s. 5.

Landlord to provide tenant with copy of agreement.

83(1) Where, after the coming into force of this Part, a tenancy agreement in writing

(a) is executed by both the tenant and the landlord or his agent; or

(b) is executed by the tenant and delivered to the landlord for execution by him or his agent;

the landlord or his agent, as the case may be, shall within twenty-one days after execution under clause (a) or within twenty-one days after delivery by the tenant under clause (b), provide the tenant with a fully executed duplicate original copy of the tenancy agreement.

En. S.M. 1970, c. 106, s. 3.

Failure to deliver copy of tenancy agreement.

83(2) Where a copy of the tenancy agreement is not delivered to the tenant in accordance with subsection (1), the obligations of the tenant thereunder cease until the copy is delivered to him.

En. S.M. 1970, c. 106, s. 3.

Security deposits.

84(1) A landlord shall not require or receive a security deposit from a tenant under a tenancy agreement entered into or renewed after this Part comes into force in an amount that exceeds one half month's rent under the tenancy agreement and where a landlord requires and receives a security deposit from a tenant, he shall at the time the security deposit is received give to the tenant a written acknowledgement that the deposit has been received and the date and amount thereof.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1975, c. 37, s. 1.

Disposition of excess security deposit.

84 (1.1) Where a landlord receives a security deposit that exceeds one-half month's rent under a tenancy agreement, the rentalsman

(a) may order the landlord to refund to the tenant forthwith, the excess amount with interest thereon calculated in accordance with the regulations; or

(b) may order the landlord to pay the amount of the excess with interest thereon calculated in accordance with the regulations to the rentalsman, who shall thereupon pay those moneys over to the tenant; or

(c) may direct the tenant to deduct the amount of the excess with interest thereon calculated in accordance with the regulations from the rent to be paid by the tenant to the landlord from the next ensuing rental period or periods depending upon the amount of the excess involved.

En. S.M. 1980, c. 60, s. 2.

Damage.

84(2) In determining the disposition of a security deposit, ordinary wear and tear shall not constitute damage to the premises.

En. S.M. 1970, c. 106, s. 3.

Post-dated cheques.

84(3) On, from and after the coming into force of this Part, a tenancy agreement shall not include a provision for the delivery of more than one post-dated cheque or other negotiable instrument to be used for the payment of rent for the next ensuing rental period.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1980, c. 60, s. 3.

Coercing tenant to deliver post-dated cheques.

84(4) Where a landlord or his agent coerces or attempts to coerce a tenant or offers any monetary or other consideration to a tenant to induce the tenant to deliver any postdated cheques or other instruments to be used for payment of rent to the landlord or agent contrary to subsection (3), the landlord or agent, as the case may be, is guilty of an offence under this Act.

En. S.M. 1971, c. 35, s. 2; Am. S.M. 1975, c. 37, s. 1; S.M. 1980, c. 60, s. 4. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 2; S.M. 1975, c. 37, s. 1; S.M. 1980, c. 60, ss. 2-4.

Appointment of rentalsmen.

85(1) For the purposes of this Part, the Lieutenant Governor in Council may designate one or more persons as rentalsmen who shall, in addition to carrying out such duties as are required by this Act, carry out such other duties and perform such functions as may be prescribed by the Lieutenant Governor in Council.

En. S.M. 1970, c. 106, s. 3.

Rentalsmen appointed for specified area.

85(2) A rentalsman designated under subsection (1) may be designated from among persons employed in the government service and may be required to serve within a specified area of the province.

En. S.M. 1970, c. 106, s. 3

Functions of office of rentalsman.

85(3) Except as otherwise provided in this Act, the functions of the office of rentalsman are

(a) to advise landlords and tenants in tenancy matters;

(b) to receive complaints and mediate disputes between landlords and tenants;

(c) to disseminate information for the purpose of educating and advising landlords and tenants concerning rental practices, rights and remedies; and

(d) to receive and investigate complaints of conduct in contravention of legislation governing tenancies.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1980, c. 60, s. 5; S.M. 1982, c. 18, s. 6.

Authorized person may file complaint.

85 (3.1) For the purpose of clauses (3) (b) and (d), any person who has proper knowledge and is duly authorized by the landlord or tenant, may file a complaint under either or both of those clauses with the rentalsman on behalf of the landlord or tenant, as the case may be.

En. S.M. 1977, c. 23, s. 4.

Rentalsman may levy an administration fee.

85 (3.2) Where the rentalsman takes action under subsection 98 (8) or 119 (5) or (7), for the purpose of defraying the cost of administration in whole or in part, he may levy an administration fee on the landlord as follows:

(a) under subsection 98 (8) a reasonable sum not exceeding $50.00; and

(b) under subsection 119 (5) or (7), a fee of 10% of the cost of the repair, up to a maximum of $200.00.

En. S.M. 1980, c. 60, s. 6.

Deduction of fees from moneys payable to landlord.

85 (3.3) Where the rentalsman has in his possession or control moneys to which the landlord is entitled, he may deduct from those moneys any fee levied by him under subsection (3.2) and remit the balance to the landlord.

En. S.M. 1980, c. 60, s. 6.

Access to premises and documents.

85(4) For the purpose of investigating a specific complaint under this Act, the rentalsman or any person authorized by the rentalsman for the purpose, shall have access at any reasonable time to

(a) residential premises to which this Act applies, where there are reasonable and probable grounds to believe that access to those premises will assist in the investigation of the complaint; and

(b) specific documents, correspondence and records in those premises which are relevant to the complaint;

and the rentalsman or person may make copies of, or take extracts from, the documents, correspondence and records.

En. S.M. 1985, c. 50, s. 15.

Information confidential.

85(5) Except for the purposes of a prosecution under this Act, or in any court proceedings, or for the purpose of the administration and enforcement of this Act, neither the rentalsman nor any authorized person shall

(a) knowingly communicate, or allow to be communicated, to any person any information obtained by or on behalf of the rentalsman under this section; or

(b) knowingly allow any person to inspect, or to have access to, any copy of any book, record, document, file, correspondence, or other record obtained by, or on behalf of, the rentalsman under this section.

En. S.M. 1971, c. 35, s. 3.

Exception.

85(6) Subsection (5) does not prohibit

(a) the communication of information by the rentalsman to persons charged with the administration of any statutes of Canada or of any other province that relate to the subject matter of this Act; or

(b) the communication by the rentalsman of any information with the consent of the person to whom that information relates; or

(c) the release or publication by the rentalsman, with the consent of the owner of any book, record, document, file, correspondence, or other record, or a copy thereof.

En. S.M. 1971, c. 35, s. 3.

Authority for access.

85(7) Where a person refuses to grant access to residential premises or refuses to produce documents, correspondence or records for purposes of subsection (4), the rentalsman or any person authorized by the rentalsman for the purpose may apply to a justice for an order

(a) granting the rentalsman or person access to the residential premises; or

(b) granting the rentalsman or person access to specific documents, correspondence and records in those premises which are relevant to the complaint; or

(c) authorizing the rentalsman or person to make copies of, or take extracts from, the documents, correspondence and records;

or to do 2 or more of those things.

En. S.M. 1985, c. 50, s. 15.

Where order may be issued.

85(8) A justice may, on an ex parte application where necessary, issue the order referred to in subsection (7) if the justice is satisfied that

(a) there are reasonable and probable grounds to believe that access to the residential premises in question will assist in the investigation of the complaint; and

(b) the authority for access is reasonable and necessary for purposes of investigating the complaint.

En. S.M. 1985, c. 50, s. 15.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 3; S.M. 1977, c. 23, s. 4; S.M. 1980, c. 60, ss. 5 & 6; S.M. 1982, c. 18, s. 6; S.M. 1985, c. 50, s. 15.

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Return of security deposit.

86 (1) Where a landlord or anyone on his behalf receives from a tenant a security deposit, the landlord shall, subject to section 87, within 14 days after the expiration or termination of the tenancy return the security deposit with interest thereon calculated at the rate as set out in the regulations.

En. S.M. 1980, c. 60, s. 7.

Rentalsman may order return of security deposit.

86 (2) Where the rentalsman is satisfied

(a) that a security deposit has not been returned to a tenant in accordance with subsection (1); and

(b) that there is no agreement as mentioned in subsection 87 (1); and

(c) that the landlord has not objected to the return of the security deposit with interest thereon to the tenant;

the rentalsman may order the landlord to pay over the security deposit together with interest thereon as mentioned in subsection (1) to the rentalsman.

En. S.M. 1980, c. 60, s. 7.

Rent payable to provide deposit.

86(2.1) Where, under subsection (2) the rentalsman orders a landlord to pay over a security deposit and the landlord fails, refuses or neglects to comply with the order within 14 days after the day the order is made, the rentalsman may order any tenants of premises in the building to pay to the rentalsman any rents due and payable or becoming due and payable to the landlord until sufficient moneys are received by the rentalsman to satisfy the order for the payment of the security deposit.

En. S.M. 1982, c. 18, s. 7.

Payments under subsection (2.1) deemed to be rent.

86(2.2) Where a tenant pays rent to the rentalsman in accordance with an order made under subsection (2.1) and not to the landlord, the payment to the rentalsman shall be conclusively deemed to be payment of rent to the landlord and not a failure or refusal by the tenant to pay his rent.

En. S.M. 1982, c. 18, s. 7.

Retroactivity.

86 (3) Notwithstanding any other provision of this Act and notwithstanding that this section comes into force on a date to be fixed by proclamation, it is retroactive and shall be deemed to have been in force on, from and after the fifteenth day of September, 1970.

En. S.M. 1980, c. 60, s. 7.
S.M. 1980, c. 60, s. 7; Am. S.M. 1982, c. 18, s. 7.

Agreement to be in writing.

87 (1) Where at the time that a security deposit and interest thereon becomes refundable by a landlord to a tenant and the landlord and tenant agree without the intervention of the rentalsman as to the disposition of the security deposit and interest, the agreement shall be reduced to writing and signed by the landlord and tenant and a copy of the agreement is to be retained by the landlord, and one copy by the tenant.

En. S.M. 1980, c. 60, s. 8.

Rentalsman not bound by agreement.

87 (1.1) Where the agreement referred to in subsection (1) is not in writing, the rentalsman in mediating or arbitrating a dispute with respect to the disposition of a security deposit and interest thereon is not required to give any effect to the agreement.

En. S.M. 1980, c. 60, s. 8.

Objection by a landlord to return of deposit.

87 (1.2) Where a landlord objects to the return of a security deposit or any part thereof to the tenant on the allegation of the landlord

(a) that the tenant has caused damage to the residential premises concerned; or

(b) that the tenant is in arrears in payment of his rent;

the landlord within 14 days after the tenant has vacated the premises shall in writing notify the rentalsman and the tenant of his reasons for objecting to the return of the security deposit or any part thereof to the tenant, and at the same time forward to the rentalsman that part of the security deposit that has not been returned to the tenant with interest thereon calculated at the rate set out in the regulations.

En. S.M. 1980, c. 60, s. 8.

Rentalsman to notify tenant of receipt of security deposit.

87 (1.3) Where the rentalsman receives the security deposit and interest thereon pursuant to subsection (1.2) he shall in writing notify the tenant accordingly together with a statement of the allegations of the landlord made to the rentalsman under that subsection and the tenant may, within 30 days of the date of the notification in writing notify the rentalsman of any objections that he has with respect to the allegations of the landlord.

En. S.M. 1980, c. 60, s. 8.

Rentalsman may make disposition.

87 (1.4) Where following a notification under subsection (1.3) the tenant fails, refuses or neglects to notify the rentalsman of any objection as required under that subsection, the rentalsman may make such disposition of the allegations of the landlord and the security deposit and interest thereon as he considers just and reasonable under the circumstances.

En. S.M. 1980, c. 60, s. 8.

Rentalsman to endeavour to obtain agreement.

87 (2) Where an objection to the allegations of the landlord is filed under subsection (1.3), the rentalsman shall as soon as is reasonably possible endeavour to obtain an agreement between the landlord and tenant as to the manner in which the security deposit should be dealt with, and if the landlord and tenant fail to reach an agreement, the rentalsman shall continue to hold the deposit and interest thereon to be disposed of in accordance with subsection (3), (5) or (6), as the case may require.

En. S.M. 1980, c. 60, s. 9.

Arbitration.

87(3) Notwithstanding subsection (2), where there is disagreement between a landlord and a tenant as to the manner in which a security deposit and the interest thereon is to be dealt with, the landlord and tenant may in writing agree to have the rentalsman act as an arbitrator; and in such a case, the finding of the rentalsman is final and binding on the landlord and tenant and is not subject to appeal or review by any court of law.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1975, c. 37, s. 2.

Arbitration Act not to apply.

87(4) The Arbitration Act does not apply to an arbitration under subsection (3).

En. S.M. 1970, c. 106, s. 3.

Duration of mediation or arbitration.

87(5) Where under this section a rentalsman mediates or arbitrates a dispute respecting the disposition of a security deposit and the interest thereon, and fails to complete the mediation or arbitration, as the case may be, he shall in writing forthwith notify the parties concerned of his inability to complete the mediation or arbitration together with his reasons for failing to complete the mediation or arbitration; and if within ten days from the date of receipt of the notification the landlord does not commence an action for the security deposit and interest held by the rentalsman, the rentalsman shall return the security deposit and interest to the tenant.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1975, c. 37, s. 2; Am. S.M. 1977, c. 23, s. 5.

Whereabouts of tenant unknown.

87 (6) Where, pursuant to subsection (5), the rentalsman has made declaration of inability to complete mediation or arbitration, and the present location of the former tenant is unknown to the landlord, the rentalsman may, if he is satisfied that the landlord has diligently sought to ascertain the present whereabouts of the former tenant, within the 10 day period required under subsection (5)

(a) provide the current address of the tenant to the landlord, if it is known by the rentalsman; or

(b) if the rentalsman does not have knowledge as to the former tenant's present address or location, the rentalsman may determine the disposition of the security deposit and interest in such manner as may appear reasonable and just;

and the determination of the rentalsman under clause (b) is final and binding on all parties.

En. S.M. 1977, c. 23, s. 6; Am. S.M. 1978, c. 49, s. 60; Am. S.M. 1980-81, c. 26, s. 19.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 5; S.M. 1975, c. 37, s. 2; S.M. 1977, c. 23, ss. 5 & 6; S.M. 1978, c. 49, s. 60; S.M. 1980, c. 60, ss. 8 & 9. Am. S.M. 1980-81, c. 26, s. 19.

Distress abolished.

88 No landlord shall distrain for default in payment of rent whether a right of distress has heretofore existed by statute, the common law or contract

En. S.M. 1970, c. 106, s. 3.

Interesse termini abolished.

89 The doctrine of interesse termini is abolished, and all tenancy agreements are capable of taking effect at law or in equity from the date fixed for commencement of the term, without actual entry or possession.

En. S.M. 1970, c. 106, s. 3.

Frustration.

90 The doctrine of frustration of contract applies to tenancy agreements and The Frustrated Contracts Act applies thereto.

En. S.M. 1970, c. 106, s. 3.

Covenants inter-dependent.

91 Subject to this Part, the common law rules respecting the effect of the breach of a material covenant by one party to a contract on the obligation to perform by the other party apply to tenancy agreements.

En. S.M. 1970, c. 106, s. 3.

Covenants in posse and in esse.

92 Covenants concerning things related to the rented premises, including covenants relating to the payment by the tenant of a security deposit and the refund thereof by the landlord, run with the land whether or not the things are in existence at the time of the demise.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1982, c. 18, s. 8.

Right to assign or sublet.

93(1) Subject to subsection (3), a tenant has the right to assign, sublet or otherwise part with possession of the rented premises.

En. S.M. 1970, c. 106, s. 3.

Exception.

93(2) Subsection (1) does not apply to a tenant of premises administered by or for the Government of Canada or Manitoba or a municipality, or any agency thereof, or otherwise administered under the National Housing Act, 1954 (Canada).

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1975, c. 37, s. 3; S.M. 1980, c. 60, s. 10.

Consent.

93(3) A tenancy agreement may provide that the right of a tenant to assign, sublet or otherwise part with possession of the rented premises is subject to the consent of the landlord, and, where it is so provided, the consent shall not be arbitrarily or unreasonably withheld.

En. S.M. 1970, c. 106, s. 3.

Charges.

93(4) A landlord shall not make any charge for giving his consent referred to in subsection (3) except his reasonable expenses incurred thereby, not exceeding the sum of $20.00.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 6; S.M. 1980, c. 60, s. 11.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 6; S.M. 1975, c. 37, s. 3; S.M. 1980, c. 60, ss. 10 & 11.

Mitigation of damages.

94(1) Where a tenant abandons the premises in breach of the tenancy agreement, the landlord's right to damages is subject to the same obligation to mitigate his damages as applies generally under the rule of law relating to breaches of contract.

En. S.M. 1970, c. 106, s. 3.

Storage of personal property.

94 (2) Except where a landlord and tenant have agreed in writing for the storage of any personal property of the tenant, if

(a) the tenant abandons the residential premises contrary to the tenancy agreement; or

(b) the tenant vacates the residential premises upon the termination or expiration of the tenancy agreement;

the landlord may remove any personal property left on the premises by the tenant and place them in safe storage for a period of at least 2 months, and shall forthwith provide the rentalsman with an inventory of the personal property so stored.

En. S.M. 1980, c. 60, s. 12; Am. S.M. 1982, c. 18, s. 9.

Worthless personal property.

94 (2.1) Notwithstanding subsection (2), where the landlord alleges that personal property left on the premises by a tenant who has abandoned the premises or has gone out of possession of the premises upon the termination or expiration of the tenancy agreement

(a) is worthless; or

(b) is unsanitary or unsafe to store; or

(c) the sale thereof would realize an amount that is less than the cost of removing, storing and sale;

the rentalsman may permit the landlord to dispose of the personal property in such manner and subject to such terms and conditions as the rentalsman may authorize.

En. S.M. 1980, c. 60, s. 12.

Sale of personal property.

94(3) Where the tenant or any person claiming title to the personal property has not claimed the personal property after 2 months have expired, the landlord may by public auction sell them or any part thereof, and after the sale the landlord

(a) is entitled to recover back from the proceeds of the sale any actual expenses accrued in respect of the storage and cost of sale and the amount of any judgment given under section 110; and

(b) shall record details of the sale and disposition of the proceeds to the rentalsman; and

(c) shall pay any excess of the sale proceeds over to the rentalsman who shall in turn pay them out to the Minister of Finance if they are unclaimed by the tenant within one year of the sale.

En. S.M. 1977, c. 23, s. 8; Am. S.M. 1980, c. 60, s. 13; S.M. 1982, c. 18, s. 10
En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 7; Am. S.M. 1972, c. 39, s. 2
Am. S.M. 1977, c. 23, ss. 7 & 8; S.M. 1980, c. 60, ss. 12 & 13;
S.M. 1982, c. 18, ss. 9 & 10.

Privacy.

95(1) Except in cases of emergency and except where the landlord has a right under a tenancy agreement to show the premises to prospective tenants at reasonable hours after notice of termination of the tenancy has been given or to show the premises to prospective buyers during reasonable hours, the landlord shall not exercise a right to enter the rented premises unless he has first given written notice to the tenant not more than 48 hours or less than 24 hours before the time of entry which shall be during daylight hours and specified in the notice; but nothing in this section shall be construed so as to prohibit entry with the consent of the tenant given at the time of entry or where a tenant voluntarily gives consent in writing for a specific purpose or occasion

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 8; Am. S.M. 1975, c. 37, s. 4; Am. S.M. 1977, c. 23, s. 9; S.M. 1982, c. 18, s. 11.

Order of rentalsman for landlords access to premises.

95 (2) Where

(a) a dispute arises between a landlord and his tenant as to the right of the landlord to enter premises occupied by the tenant; or

(b) a landlord is unable to exercise his right or is obstructed in exercising his right to enter premises occupied by any of his tenants;

the landlord or the tenant may refer the matter to the rentalsman, who after considering all the circumstances of the matter, may make such order as to him seems just and reasonable.

En. S.M. 1977, c. 23, s. 9.

Offence and penalty.

95 (3) Any landlord or tenant who fails, refuses or neglects to comply with an order made under subsection (2) is guilty of an offence and is liable, on summary conviction to a fine not exceeding $100.00.

En. S.M. 1977, c. 23, s. 9.
En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 8; Am. S.M. 1975, c. 37, s. 4; Am. S.M. 1977, c. 23, s. 9; S.M. 1982, c. 18, s. 11.

Entry during election campaigns.

96 No landlord or servant of a landlord shall restrict reasonable access to the rented premises by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in a municipal or metropolitan government or a school board for the purpose of canvassing or distributing election material.

En. S.M. 1970, c. 106, s. 3.

Alteration of locks.

97(1) Subject to subsection (2), a landlord or tenant shall not, during occupancy of the rented premises by the tenant alter or cause to be altered the locking system on any door giving entry to the rented premises except by mutual consent or except where the rentalsman is of the opinion that the alteration is reasonable.

En. S.M. 1970, c. 106, s. 3.

Safety devices on premises.

97(2) Every landlord who rents residential premises to a tenant shall install or cause to be installed on the premises, including the door giving entry to the premises, devices necessary to make the premises reasonably secure from unauthorized entry.

En. S.M. 1971, c. 35, s. 9.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 9.

Landlord's responsibility to repair.

98(1) Subject to subsection (2), a landlord is responsible for providing and maintaining the rented premises in a good state of repair and fit for habitation during the tenancy and for complying with health and safety standards, including any housing standards required by law, and notwithstanding that any state of non-repair existed to the knowledge of the tenant before the tenancy agreement was entered into.

En. S.M. 1970, c. 106, s. 3.

Responsibility of tenant.

98(2) The tenant shall

(a) be responsible for ordinary cleanliness of the rented premises; and

(b) take reasonable care of the rented premises and repair damage to the rented premises caused by his wilful or negligent conduct or such conduct by persons who are permitted on the premises by him; and

(c) take all reasonable precaution to avoid causing a nuisance or disturbance to other persons resident in the same building by any person resident in his rented premises or by others who are permitted on the premises by him.

En. S.M. 1971, c. 35, s. 10; Am. S.M. 1975, c. 37, s. 5.

Failure to fulfil obligation.

98(3) A failure by a landlord or a tenant to fulfil any of his obligations or responsibilities under this section shall be sufficient reason for the non-offending party to terminate the tenancy agreement by giving to the other party a notice to terminate on or before the last day of any rental payment period to be effective on the last day of the following rental payment period but where the failure is by a tenant in respect of his obligations under clause (b) or (c) of subsection (2), the landlord, notwithstanding any other provision of this Act may terminate the tenancy agreement to take effect on the fifth day following the date on which notice to terminate is given to the tenant by the landlord.

En. S.M. 1972, c. 39, s. 3; Am. S.M. 1975, c. 37, s. 5; S.M. 1980, c. 60, s. 14

Creating a nuisance or disturbance.

98(4) Where a tenant or any person who is permitted on the premises by the tenant, causes a nuisance or disturbance to other residents in the building, the landlord of his own volition, or upon complaint made to him by any person resident in the building, shall, if he is satisfied that the complaint is justified, request the tenant or the person causing the nuisance or disturbance to discontinue the nuisance or disturbance; and if it is not discontinued upon request, the landlord or the complaining resident in the building may lay an information before a provincial judge against the offending tenant or person or both of them.

En. S.M. 1972, c. 39, s. 3; Am. S.M. 1977, c. 23, s. 10.

Offence and penalty for creating nuisance or disturbance.

98(5) Where the provincial judge who hears an information laid under subsection (4) finds that a nuisance or disturbance was caused as alleged and that the tenant or person failed upon request by the landlord to discontinue the nuisance or disturbance, the tenant, or the person who caused the nuisance or disturbance is guilty of an offence and on summary conviction is liable to

fine of not less than twenty-five dollars or more than one hundred dollars for a first offence and not less than fifty dollars or more than two hundred dollars for any subsequent offence committed on the same premises.

En. S.M. 1972, c. 39, s. 3; Am. S.M. 1977, c. 23, s. 11.

Reference of complaint to rentalsman.

98(6) Where an information is laid under this section, the provincial judge may, before adjudicating thereon, refer the matter to the rentalsman who shall investigate the matter and report his findings to the provincial judge.

En. S.M. 1971, c. 35, s. 10; Am. S.M. 1977, c. 23, s. 12.

Failure to supply services.

98(7) Where under the terms of a tenancy agreement, the landlord is responsible for the provision of heat, water and electric power services, or any one or more of them, and the landlord fails or neglects to fulfil his obligation to provide these services, or it appears that a tenant may be deprived of any of those services due to the failure of the landlord to meet his obligation to the vendor of any of those services, the tenant shall, upon the instruction of the rentalsman, pay the rent as it falls due to the rentalsman.

En. S.M. 1972, c. 39, s. 3.

Disposition of rent.

98(8) Where the rent is paid to the rentalsman under subsection (7), the tenant shall not be held to be in arrears of his rent and the rentalsman may

(a) hold and continue to receive rents until the landlord provides for the use of the tenant heat, water or electric power services as the case may be; and

(b) where necessary, pay to the vendor of heat, water or electric power services from the rent received, an amount sufficient to ensure the supply of those services to the landlord by the vendors.

En. S.M. 1972, c. 39, s. 3.

Payment of excess rents to landlord.

98(9) Where the rentalsman has collected rents in excess of any amount required to be paid under clause (b) of subsection (8), he shall subject to subsections 85(3.2) and (3.3) refund the excess to the landlord.

En. S.M. 1972, c. 39, s. 3; Am. S.M. 1980, c. 60, s. 15.
Am. S.M. 1970, c. 106, s. 3; S.M. 1971, c. 35, s. 10; S.M. 1972, c. 39, s. 3; S.M. 1975, c. 37, s. 5; S.M. 1977, c. 23, ss. 10-12; S.M. 1980, c. 60, ss. 14 & 15.

Relief against acceleration clauses.

99 Where default has occurred in the payment of rent due under a tenancy agreement or in the observance of any obligation of the tenant and under the terms of the tenancy agreement, by reason of such default, the whole or any part of the remaining rent for the term of the tenancy has become due and payable, at any time before or after the commencement of an action for the enforcement of the rights of the landlord and before judgment, the tenant may

(a) pay only the rent due and payable at the time of the default, other than future rent with interest thereon at the same rate that a landlord is required to pay on the return of a security deposit to a tenant; or

(b) perform the obligation, and pay any reasonable expenses necessarily incurred by the landlord in bringing the action;

and thereupon he is relieved from the consequences of the default.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 11; S.M. 1980, c. 60, s. 16.

Notice of termination of tenancy.

100 A tenancy agreement may be terminated by either the landlord or the tenant upon notice to the other and, unless otherwise agreed upon at the time when the notice is given, the notice

(a) shall meet the requirements of section 101;

(b) shall be given in the manner prescribed by section 102; and

(c) shall be given in sufficient time to give the period of notice required by section 103.

En. S.M. 1971, c. 35, s. 12.

Notice.

101(1) A landlord or a tenant may give notice to terminate either orally or in writing, but a notice by a landlord to a tenant is not enforceable under section 103 unless it is in writing.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 13.

Content of notice.

101(2) A written notice to terminate

(a) shall be signed by the person giving the notice, or his agent;

(b) shall identify the premises in respect of which the notice is given;

(c) shall state the date on which the tenancy is to terminate or that the tenancy is to terminate on the last day of the period of the tenancy next following the giving of the notice; and

(d) shall state the reason for the termination of the tenancy.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1975, c. 37, s. 6.

Saving.

101(3) A notice may state both

(a) the date on which the tenancy is to terminate; and

(b) that the tenancy agreement is to terminate on the last day of the rental payment period as defined in section 103, following the date on which the notice is given in accordance with that section;

and if it does state both, and the date on which the tenancy is to terminate is incorrectly stated, the notice is nevertheless effective to terminate the tenancy as provided under clause (b).

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 13.

Forms of notice.

101(4) A notice need not be in any particular form, but a notice by a landlord to a tenant may be in Form 5 of the Schedule and a notice by a tenant to a landlord may be in Form 6 of the Schedule.

En. S.M. 1970, c. 106, s. 3.

No fee for notice to vacate.

101(5) A landlord shall not charge his tenant any fee for a notice to vacate residential premises.

En. S.M. 1971, c. 35, s. 13.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 13; Am. S.M. 1975, c. 37, s. 6.

Notice by tenant.

101 (6) Notwithstanding subsection (1) where a tenant gives oral notice to terminate to a landlord, the landlord may, at the time the oral notice is given, produce and require the tenant to sign in duplicate a written notice to terminate which may be in accordance with subsection (4) and immediately upon completion of the notice by the tenant the landlord shall give one copy to the tenant; and where the landlord produces the notice and the tenant fails or refuses to sign the notice, the oral notice shall be deemed not to have been given by the tenant to the landlord.

En. S.M. 1977, c. 23, s. 12.1.

Termination of mobile home site tenancy.

101 (7) Where a tenancy is for the rental of a mobile home site, and the landlord intends to use the site for a purpose other than as a mobile home site a notice to terminate the tenancy given by the landlord to the tenant shall be given at least 6 months in advance of the termination date of that tenancy.

En. S.M. 1980, c. 60, s. 17.

Mobile home tenant may terminate tenancy.

101 (8) Where a tenant of a mobile home site receives a notice under subsection (7), he may terminate the tenancy agreement by giving the landlord one month's notice in writing.

En. S.M. 1980, c. 60, s. 17.

Tenancy agreement continued for duration of notice.

101 (9) Where a notice under subsection (7) has the effect of terminating a tenancy agreement on a date that extends beyond the expiry date of a tenancy agreement entered into between the landlord and the tenant, the tenancy agreement is deemed to be continued for the additional period under the same terms, conditions and rent payable under the tenancy agreement.

En. S.M. 1980, c. 60, s. 17.

Non-application of subsection (7).

101 (10) Subsection (7) does not apply where the tenant is in arrears of rent or is in default of his obligations under subsection 98 (2).

En. S.M. 1980, c. 60, s. 17.

Offence and penalty.

101 (11) Where a landlord gives a notice to a tenant under subsection (7) and thereafter the tenant vacates the site but the landlord instead of using the site for another purpose rents it to another tenant as a mobile home site, the landlord is guilty of an offence and liable on summary conviction to the penalties prescribed in subsection 117 (1).

En. S.M. 1980, c. 60, s. 17.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 13; S.M. 1975, c. 37, s. 6; S.M. 1977, c. 23, s. 12.1; S.M. 1980, c. 60, s. 17.

102 Repealed S.M. 1982, c. 18, s. 12.

Term of tenancy and rental payment period defined.

103(1) In this section

(a) "term of tenancy" means the length of time over which the tenancy agreement is to run; and

(b) "rental payment period" means the interval at which rent is payable under a tenancy agreement but notwithstanding any agreement to the contrary, for the purpose of this section, no rental payment period shall exceed one month.

En. S.M. 1971, c. 35, s. 15.

Duration of rental payment period.

103(2) A rental payment period need not necessarily coincide with a calendar period.

En. S.M. 1971, c. 35, s. 15.

Notice to terminate a tenancy with no predetermined expiry date.

103(3) Where a tenancy agreement has no predetermined expiry date or where a tenancy agreement is not in writing, a notice to terminate shall be given by the landlord or the tenant on or before the last day of any rental payment period to be effective on the last day of the ensuing rental payment period.

En. S.M. 1972, c. 39, s. 4; Am. S.M. 1975, c. 37, s. 8.

Right to continued occupancy.

103(4) Notwithstanding that

(a) a landlord has given a tenant written notice to terminate a tenancy agreement under subsection (3); or

(b) a written tenancy agreement provides that it shall expire on a predetermined expiry date;

the tenant unless he is in default of any of his obligations under this Act or his tenancy agreement has the right subject to subsection (6) or (7), to continue in occupancy of the premises after the tenancy agreement is terminated by notice or otherwise expires, except where

(c) the landlord requires possession of the premises for the purpose of demolishing the premises; or

(d) the landlord requires possession of the premises for the purposes of repairing or renovating the premises and that such repairs or renovations cannot be carried out while the tenant continues to occupy the premises; or

(e) the landlord requires the premises for his own occupancy or for occupancy by his parents, his spouse's parents, or any of his adult children;

but where a landlord denies a tenant the right to continue in occupancy for any of the reasons set out in clause (c), (d) or (e), he shall state his reasons for doing so in a written notice to terminate given by the landlord to the tenant in accordance with sections 101, 102 and subsection (3); or where the tenancy agreement has a predetermined expiry date, the landlord shall give written notice to terminate to the tenant at least 3 months prior to the expiry date of the existing tenancy agreement.

En. S.M. 1975, c. 37, s. 9; Am. S.M. 1982-83-84, c. 74, s. 2.

Notice of termination by landlord.

103(4.1) Where the tenant's right to continued occupancy is terminated by a landlord for any of the reasons set out in clause (4)(c), (d) or (e), the landlord shall, except in a case to which subsection 113(6) applies

(a) in accordance with section 101, give to the tenant not less than 3 months written notice of the termination; and

(b) forthwith provide the rentalsman with a copy of the notice.

En. S.M. 1982-83-84, c. 74, s. 3.

Informal resolution of matter.

103(4.2) Upon the receipt of a copy of the notice under subsection (4.1), the rentalsman shall, in writing, advise the landlord and the tenant that they may, to their mutual satisfaction, informally resolve the matter of the termination of the tenancy agreement, including the payment of compensation, if any, by the landlord to the tenant, not later than 45 days immediately preceding the date of the termination of the tenancy agreement as set out in the notice.

En. S.M. 1982-83-84, c. 74, s. 3.

Notification of failure to rentalsman.

103(4.3) Where the landlord and tenant fail or refuse to resolve the matter of the termination of the tenancy agreement, the payment of compensation by the landlord and any other matter that may be relevant, within the time mentioned under subsection (4.2), either the landlord or the tenant may in writing so notify the rentalsman.

En. S.M. 1982-83-84, c. 74, s. 3.

Rentalsman to fix amount, if any, of compensation.

103(4.4) Upon being notified of the failure or refusal of the landlord and tenant to arrive at a satisfactory agreement as mentioned in subsection (4.3), the rentalsman shall, after consultation with both parties, determine what, if any, compensation, not exceeding $250.00, should be paid by the landlord to the tenant for the purpose of assisting the tenant in paying his cost of moving.

En. S.M. 1982-83-84, c. 74, s. 3.

Termination where premises administered for government.

103(4.5) Where premises are administered by or for the Government of Canada or Manitoba, or any agency thereof, or any municipality, or are otherwise administered under The National Housing Act, 1953-54 (Canada), the landlord may, subject to section 101 and for any of the reasons set out in subsection (4) or by virtue of any provision relating to or arising out of the requirements or program described under The National Housing Act, 1953-54, terminate the tenancy

(a) where the tenancy agreement has no predetermined expiry date or where the tenancy agreement is not in writing by giving the notice in accordance with subsection (3); or

(b) where there is a written tenancy agreement with a predetermined expiry date, by giving the notice to the tenant at least 3 months prior to the expiry date of the existing tenancy agreement.

En. S.M. 1982-83-84, c. 74, s. 3.

Non-application of certain provisions.

103(4.6) Subsections (4.1), (4.2), (4.3), and (4.4) do not apply

(a) to the owner or occupant of a residential dwelling unit who uses or occupies the unit as his primary residence and who rents that unit to a tenant for a temporary period and on the understanding that the tenant shall give up vacant possession of the unit to and for the use of the owner or occupant at the end of that temporary period; but in every such case the owner or occupant shall give to the tenant at least one month's notice to vacate the dwelling unit; or

(b) to building premises that contains not more than 6 residential units and the termination of any of the residential tenancies therein is required for the purposes mentioned in clause 103(4)(d); but in every such case the landlord shall give to the tenant at least 3 months' notice to vacate the premises; or

(c) to residential premises administered as mentioned in subsection (4.5).

En. S.M. 1982-83-84, c. 74, s. 3.

Offences and penalties.

103(5) A landlord who terminates a tenancy

(a) for the reason mentioned in clause (4)(c) but who before demolition rents the premises to another tenant; or

(b) for the reasons mentioned in clause (4)(d) but who before carrying out the alleged repairs or renovations rents the premises to another tenant; or

(c) for the reasons mentioned in clause (4)(e) but who fails to occupy the premises in accordance with the provisions of that clause within 1 month from the date of the termination of the tenancy and for a period of at least 1 year thereafter; or

(d) who fails or refuses to pay to the tenant the amount of money he is required to pay under subsection (4.4);

is guilty of an offence and on summary conviction is liable to a fine of not more than $1,000.00, and the court may, in addition to the fine, order the landlord to pay to the tenant an amount not exceeding $500.00.

En. S.M. 1982-83-84, c. 74, s. 4.

Tenancy deemed to be renewed.

103(6) Where a tenancy agreement has no predetermined expiry date and the tenant exercises his right to continue in occupancy as provided in subsection (4), his tenancy agreement, whether written or oral, shall be deemed to have been renewed except that the rent may be varied in accordance with section 116.

En. S.M. 1975, c. 37, s. 9; Am. S.M. 1980, c. 60, s. 19.

Limitation on term of tenancy agreement.

103(7) Where a tenant is in possession of premises under a tenancy agreement having a predetermined expiry date, the landlord shall submit to the tenant at least 3 months prior to the expiry date of the existing agreement, a tenancy agreement but that tenancy agreement shall not provide for a term of tenancy that is less than or longer than 12 months, except by the mutual consent of the landlord and tenant and at the same time that he submits the tenancy agreement, the landlord shall advise the tenant of his right to continue in occupancy, his obligation to execute the agreement at least 2 months before expiry of the existing agreement and the consequences of the tenant's failure to do so.

En. S.M. 1975, c. 37, s. 9.

Execution of tenancy agreement.

103(8) At least 2 months prior to the expiry date of the existing tenancy agreement, the tenant shall either execute or refuse to execute the tenancy agreement submitted to him under subsection (7), but

(a) where the tenant refuses to execute the tenancy agreement or where he fails or neglects to execute the tenancy agreement as required, he shall be deemed to have given notice to the landlord of his intention to terminate his tenancy on the expiry date of the existing tenancy in which case he has no right to continue in occupancy of the premises after the expiration of the existing tenancy agreement; and

(b) where the landlord fails, refuses or neglects to submit another tenancy agreement to the tenant as required and the tenant continues in occupancy after the expiry date of his existing tenancy agreement, the existing tenancy agreement shall be deemed renewed for a further 6 month period on the same terms and conditions as the existing tenancy agreement.

En. S.M. 1975, c. 37, s. 9.

Tenancy agreement subject to Residential Rent Regulation Act.

103(8.1) Where under subsection (8), a tenant executes a tenancy agreement of residential premises to which The Residential Rent Regulation Act applies, the tenancy agreement is and shall be conclusively deemed to provide that it is subject to any variation in a rent increase which may be allowed as a result of an application, objection or proceeding under that Act.

En. S.M. 1982, c. 18, s. 13.

Determination of certain disputes.

103(9) Where a dispute arises as to the right of a tenant to continue in occupancy or with respect to any of the terms and conditions under which the tenant continues in occupancy of the premises, either the landlord or the tenant may refer the dispute to the rentalsman for a determination thereof.

En. S.M. 1982-83-84, c. 74, s. 5.

Where rentalsman may not mediate.

103(10) Notwithstanding subsection (9), the rentalsman shall not consider a dispute between a landlord and tenant where

(a) the rentalsman is of the opinion that the dispute is of such a serious nature that it should be resolved by a court; or

(b) either the landlord or tenant had or has applied to a court for a resolution of the dispute and the dispute was previously resolved by the court or is currently before the court.

En. S.M. 1980, c. 60, s. 20; Am. S.M. 1982-83-84, c. 74, s. 6.

Appeal to court.

103(11) Either the landlord or the tenant may within 10 days of the date of the determination appeal the determination of the rentalsman under subsection (9) to the County Court in the district in which the premises are situated, which case the appeal shall be heard by way of a trial de novo, and until the final disposition of the appeal, the landlord is not entitled to take possession of the premises.

En. S.M. 1982-83-84, c. 74, s. 7.

Possession by landlord.

103(12) Where a landlord provides residential premises

(a) to a person in consideration in whole or in part, of custodial or management services, and the arrangement is cancelled by either party; or

(b) to a tenant who is an employee of the landlord as a term of, or in connection with his employment and the employment is terminated by either party,

the landlord, notwithstanding any other provision of this Act shall be entitled to terminate the tenancy by giving to the tenant one month's notice to terminate but where the tenant is creating a nuisance or disturbance; or is damaging the premises, the landlord may terminate the tenancy to take effect on the fifth day following the date on which the notice to terminate is given to the tenant.

En. S.M. 1975, c. 37, s. 9.

Inability to pay rent.

103(13) Notwithstanding any other provision of this Act, where

(a) residential premises are occupied by 2 or more tenants and

(i) because of the deterioration of health or physical condition of the tenant who pays the rent, the tenants are unable to pay their rent, or

(ii) one of the tenants dies and the income of the remaining tenants is insufficient to pay the rent; or

(b) residential premises are occupied by a single tenant who

(i) because of deterioration of health or physical condition, is unable to pay the rent, or

(ii) dies during the term of the tenancy agreement;

the tenant, or the heirs, assigns or legal personal representative of the tenant, as the case may be, may terminate the tenancy agreement by giving the landlord 1 month's notice, accompanied, where applicable, by a medical certificate; and thereupon the tenant, or the heirs, assigns or legal personal representative of the tenant, is or are relieved of any liability under the tenancy agreement after the date of its termination.

En. S.M. 1985, c. 47, s. 25.

Am. S.M. 1971, c. 35, s. 15; S.M. 1972, c. 39, s. 4; S.M. 1975, c. 37, ss. 8 & 9; S.M. 1977, c. 23, s. 15, Am. 1980, c. 60, ss. 18-20; S.M. 1982, c. 18, ss. 13 & 14; S.M. 1982-83-84, c. 74, ss. 2-7; S.M. 1985, c. 47, s. 25.

Failure to pay rent constitutes termination of tenancy.

104(1) Where a tenant fails to pay his rent within three days from the date on which the rent falls due and payable and refuses or neglects on demand made in writing and served on the tenant to pay the rent the failure, refusal or neglect constitutes at the option of the landlord a termination of the tenancy agreement effective on the date when the rent fell due and payable, for the purposes of sections 108 to 110 and at the option of the landlord, the demand may include a notice to terminate.

En. S.M. 1971, c. 35, s. 15; Am. S.M. 1972, c. 39, s. 5; S.M. 1974, c. 59, s. 39; S.M. 1975, c. 37, s. 10; S.M. 1982, c. 18, s. 15.

Non-application of subsection (1).

104(2) Subsection (1) does not apply where the tenancy agreement is terminated under any of the circumstances described in subsection (9) of section 103.

En. S.M. 1971, c. 35, s. 15.

104(3) Repealed. S.M. 1982, c. 18, s. 16.

S.M. 1971, c. 35, s. 15; Am. S.M. 1972, c. 39, s. 5; S.M. 1974, c. 59, s. 39; S.M. 1975, c. 37, s. 10; S.M. 1982, c. 18, ss. 15 & 16.

Providing name and address to tenants.

105 (1) Where a landlord lets more than one residential premises in the same building the landlord shall provide each tenant with a copy of section 100 to 103 inclusive together with the legal name of the landlord and his address for service, and any proceeding taken by or on behalf of a tenant may be commenced against the landlord in the name so provided.

En. S.M. 1980, c. 60, s. 21.

Delivery of information to tenants.

105 (2) The landlord may provide the tenant with the information described in subsection (1) by registered or certified mail or by delivering it or causing it to be delivered to the tenant in person.

En. S.M. 1980, c. 60, s. 21.

Notification of change in ownership.

106 Where ownership of residential premises passes from one person to another for any reason

(a) the former owner shall on or before the date of possession by the new owner, pay over to the new owner the security deposit and accrued interest thereon held by him with respect to each tenant of the premises; and

(b) the new owner or his agent shall within 14 days from the date of possession of the premises by him, notify each tenant in writing of the name of the new landlord and the amount of security deposit and accrued interest paid over to the new owner under clause (a).

En. S.M. 1975, c. 37, s. 11.

Compensation when premises not vacated.

107(1) A landlord is entitled to compensation for the use and occupation of premises after the tenancy has been terminated by notice.

En. S.M. 1970, c. 106, s. 3.

Effect of payment by overholding tenant.

107(2) The acceptance by a landlord of arrears of rent or compensation for use or occupation of the premises after notice of termination of the tenancy has been given, does not operate as a waiver of the notice or as a reinstatement of the tenancy or as the creation of a new tenancy unless parties so agree.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1975, c. 37, s. 12; Am. S.M. 1977, c. 23, s. 6.

Burden of proof.

107(3) The burden of proof that the notice has been waived or the tenancy has been reinstated or a new tenancy created is upon the person so claiming.

En. S.M. 1970, c. 106, s. 3.
En. S.M. 1970, c. 106, s. 3; Am. S.M. 1975, c. 37, s. 12; Am. S.M. 1977, c. 23, s. 16.

Application for order of possession.

108(1) Where a tenant, after his tenancy has expired or has been terminated, does not go out of possession of the premises held by him, the landlord may apply to a judge of the County Court in the district in which the premises are wholly or partly situated for an order for possession.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 19; Am. S.M. 1972, c. 39, s. 7; Am. S.M. 1975, c. 37, s. 13.

Service of application.

108(2) The application together with the supporting affidavit mentioned in subsection (3) shall be filed in the court and served on the tenant at least five days before the day named in the application for hearing of the application.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1974, c. 59, s. 39.

Contents of supporting affidavit.

108(3) The application of the landlord shall be supported by an affidavit

(a) setting out the terms of the tenancy;

(b) stating the date of expiration or termination of the tenancy;

(c) stating the failure of the tenant to deliver up possession and the reasons given for the failure, if any were given;

(d) stating the reason for the termination of the tenancy;

(e) stating, where the application includes a claim for arrears of rent, that a demand was made on the tenant in accordance with section 104; and

(f) stating any other relevant facts.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1975, c. 37, s. 13.

108(4) and 108 (5) Repealed. S.M. 1982, c. 18, s. 17.

Reckoning time.

108(6) In reckoning the time allowed for making an application or serving an application under this section, Sundays and holidays shall be excluded.

En. S.M. 1972, c. 39, s. 7.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 19; Am. S.M. 1972, c. 39, s. 7; Am. S.M. 1974, c. 59, s. 39; Am. S.M. 1975, c. 37, s. 13; S.M. 1982, c. 18, s. 17.

Claim for arrears and compensation.

109(1) The application of the landlord may also include a claim for arrears of rent and for compensation for use and occupation of the premises by the tenant after the expiration or termination of the tenancy and for damages caused to the premises by the tenant or by any person allowed on the premises by him during the tenant's occupancy.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1972, c. 39, s. 8.

Contents of supporting affidavit.

109(2) Where a claim is made under subsection (1) the affidavit in support of the application shall also show

(a) where a claim is made for rent, the amount of rent in arrears and the time during which it has been in arrears; and

(b) where a claim is made for compensation, particulars of the use made of the premises; and

(c) where a claim is made for damages caused to the premises by the tenant or any person allowed on the premises by him during his occupancy, particulars of the damage so caused and the value thereof.

Am. S.M. 1972, c. 39, s. 8; Am. S.M. 1977, c. 23, s. 17.
En. S.M. 1970, c. 106, s. 3; Am. S.M. 1972, c. 39, s. 8; Am. S.M. 1977, c. 23, s. 17.

Hearing of application.

110(1) Upon hearing the application, or, where it is opposed, upon hearing and considering, in a summary way, the oral and affidavit evidence of the parties and their witnesses, the judge may

(a) if he is satisfied that the tenancy has expired or has been terminated, give an order for possession;

(b) where a claim for arrears of rent is proven, give judgment for the amount so proven;

(c) where a claim for compensation is made, give judgment in such amount as the judge may determine

(i) for the use and occupation of the premises after the expiration or termination of the tenancy, having regard to the nature and use and occupation and the rent payable during the tenancy; and

(ii) for any damages or charges that the landlord is or may become liable to pay to a prospective tenant to whom the landlord had obligated himself to let those premises, because of the wrongful use and occupation of the premises by the present tenant after the expiration or termination of the tenancy; and

(c.1) where a claim for damages caused to the premises by the tenant or any person allowed in the premises by him during his occupancy is proven, give judgment for the value of the damages so proven; and

(d) make such order as to costs as he deems proper.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1972, c. 39, s. 9; S.M. 1976, c. 69, s. 30.

Disposition.

110(2) The Judge may grant or dismiss the application in whole or in part.

En. S.M. 1970, c. 106, s. 3.

Provincial judge may hear application.

110(3) Where an application is made under section 108 or 109, and the judge of the court is absent from the place where the application was made, a provincial judge may hear the application and deal with it in accordance with the provisions of this section.

En. S.M. 1975, c. 37, s. 14.
S.M. 1970, c. 106, s. 3; Am. S.M. 1972, c. 39, s. 9; S.M. 1975, c. 37, s. 14; S.M. 1976, c. 69, s. 30.

Report of rentalsman's investigation for court.

110 (4) Before hearing an application under section 108 or 109, the judge may require the rentalsman to provide him with a report of any investigation conducted by the rentalsman or any person on behalf of the rentalsman, in connection with the matter.

En. S.M. 1977, c. 23, s. 18.

Court may request investigation.

110 (5) Where the rentalsman has not conducted an investigation, and it is reasonable and practicable to do so, the judge may request the rentalsman to carry out the investigation and submit a report thereon to the judge.

En. S.M. 1977, c. 23, s. 18.

Order without further hearing.

110 (6) Upon receipt of the report of the rentalsman under subsection (4) or (5) and the report recommends that the application for an order for possession or compensation or both be granted or denied in whole or in part, as the case may be, a judge may grant or refuse the order as he deems just without holding any further hearing.

En. S.M. 1977, c. 23, s. 18.
S.M. 1970, c. 106, s. 3; Am. S.M. 1972, c. 39, s. 9; S.M. 1975, c. 37, s. 14; S.M. 1976, c. 69, s. 30; S.M. 1977, c. 23, s. 18.

Effect of order for possession.

111(1) An order under section 110 granting possession

(a) shall direct the tenant to deliver up possession of the premises to the landlord by a specified date or within a specified time after service of the order on the tenant; and

(b) shall state that if the order is not obeyed by the specified date or within the specified time an Order for Eviction will issue without any further notice.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1972, c. 39, s. 10.

Service of order.

111(2) An order for possession granted under section 110 shall be served on the tenant to whom it is directed.

En. S.M. 1982, c. 18, s. 17.1.

Order for eviction.

111(3) Where the order for possession is not obeyed by the specified date or within the specified time, the landlord is entitled, without any further notice, to be issued an order for eviction on filing an affidavit showing service of the order and that it has not been obeyed.

En. S.M. 1970, c. 106, s. 3.

Payment as a stay of order.

111(4) Where a tenant, before the execution of an order for eviction pays the rent in arrears, together with any amount awarded as compensation or damages under section 110 and all costs, the proceedings shall be stayed and the tenant may continue in possession as of his former tenancy.

En. S.M. 1971, c. 35, s. 20; Am. S.M. 1972, c. 39, s. 10.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 20; Am. S.M. 1972, c. 39, s. 10.

Where proceedings not stayed.

111(5) Notwithstanding subsection (4), but subject to subsection (6), where in granting an order for possession under subsection 110(1), the court or the provincial judge under subsection 110(3) in his reasons therefor found that the tenant was without justifiable or reasonable cause, habitually late in paying his rent or any arrears of rent, the order of eviction shall issue and the right of the tenant to continue in occupancy as provided under subsection (4) shall terminate.

En. S.M. 1977, c. 23, s. 19; Am. S.M. 1985, c. 51, s. 22.

Stay of order for possession.

111(6) Where an order for possession is granted under section 110 and an appeal against the order is made, the order for possession is stayed until the appeal is finally disposed of, unless the judge granting the order for possession otherwise orders.

En. S.M. 1985, c. 51, s. 22.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 20; S.M. 1972, c. 39, s. 10; S.M. 1977, c. 23, s. 19; S.M. 1982, c. 18, s. 17.1; S.M. 1985, c. 51, s. 22.

Proceedings after tenant vacates.

112 Proceedings in respect of a claim for arrears of rent or compensation may continue to judgment notwithstanding that the tenant delivers up possession of or vacates the premises after service upon him of the application.

En. S.M. 1970, c. 106, s. 3.

Recovery of possession.

113(1) Except

(a) under the authority of an order for eviction obtained under section 111; or

(b) pursuant to a determination of the rentalsman under subsection 103(9); or

(c) where the tenant has voluntarily vacated or has abandoned the premises;

the landlord is not entitled to gain possession of the premises on the ground that he is for any other reason entitled to possession.

En. S.M. 1982-83-84, c. 74, s. 8.

Defences to proceedings for possession.

113(2) In any proceedings by a landlord for possession, if the court finds that

(a) the notice to quit was given because of the tenant's complaint to any governmental authority of the landlord's violation of any statute or municipal by-law dealing with health or safety standards, including any housing standard law; or

(b) the notice to quit was given because of the tenant's attempt to secure or enforce his legal rights;

it shall refuse to grant an order for possession or an order for eviction and shall declare the notice to quit invalid and the notice to quit shall be deemed not to have been given.

En. S.M. 1970, c. 106, s. 3.

113(3) and 113(3.1) Repealed.

S.M. 1975, c. 37, s. 15.

No eviction during school year.

113(4) Where a tenant of residential premises has a child of compulsory school age living with him in those premises, the landlord shall not terminate the tenancy or evict the tenant from those premises at any time during any school year in which the child is attending school.

En. S.M. 1970, c. 106, s. 3.

Non-application of subsection (4).

113(5) Subsection (4) does not apply where

(a) a tenant is in arrears of rent; or

(b) Repealed.

S.M. 1971, c. 35, s. 21.

(c) a tenant has violated subsection (2) of section 98.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 21.

Possession after sale.

113(6) Notwithstanding subsection (4), where a bona fide sale of residential premises that is not subject to a written tenancy agreement for a specific period, takes place and the purchaser intends to occupy the entire residential premises himself, he may obtain possession thereof by giving the tenant one month's notice to vacate the premises.

En. S.M. 1971, c. 35, s. 21.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 21; S.M. 1975, c. 37, s. 15; S.M. 1980, c. 60, s. 22; S.M. 1982, c. 18, s. 18; S.M. 1982-83-84, c. 74, s. 8.

Discrimination prohibited.

114 In the renting of premises or the renewal of tenancies, no landlord shall discriminate against a tenant or prospective tenant by refusing to enter into or renew a residential tenancy agreement because of membership or participation in an association of tenants by the tenant or prospective tenant.

En. S.M. 1980, c. 60, s. 23.

Restricting against trading.

115 No landlord shall demand any payment or advantage from any tradesman or deliveryman in exchange for the privilege of exclusive access to any residential premises.

En. S.M. 1970, c. 106, s. 3.

Notice for increase in rent.

116(1) A landlord shall not increase the rent payable under a tenancy agreement or any renewal, extension, revision or assignment thereof, or be entitled to recover any additional rent resulting from such an increase unless he serves on the tenant a written notice of the increase in rent at least 3 months before the date on which the increase is to be effective.

En. S.M. 1982, c. 18, s. 19.

Only one increase per year.

116(1.1) A landlord shall not increase the rent payable by a tenant with respect to any residential premises before the expiration of 12 months from the date on which the next previous increase in the rent for the residential premises was first payable by that tenant.

En. S.M. 1982, c. 18, s. 19.

Application of subsecs. (1.1) & (2).

116(1.2) Subsections (1.1) and (2) do not apply to or in respect of an increase in the rent for residential premises to which Part II of The Residential Rent Regulation Act applies.

En S.M. 1982, c. 18, s. 19.

Increase in rent to be equal in all rental payment periods.

116 (2) Where a landlord increases the rent payable under a tenancy agreement, the increase payable in any one rental payment period shall be equal to the increase payable in all rental payment periods.

En. S.M. 1977, c. 23, s. 20.

Rent includes other considerations.

116(3) In this Part rent includes the amount of any consideration paid or required to be paid by a tenant for occupancy of residential premises and the cost of any ancillary service or accommodation or thing that the landlord provides for the tenant.

En. S.M. 1971, c. 35, s. 22.

116(4) & (5) Repealed. S.M. 1982, c. 18, s. 20

S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 22; S.M. 1975, c. 37, s. 16; S.M. 1977, c. 23, s. 20; S.M. 1980, c. 60, ss. 24 & 25; S.M. 1982, c. 18, ss. 19 & 20.

Offences and penalties.

117(1) Any person who contravenes section 84, 86, subsection 87(1.2), section 88, 94(2), (2.1) and (3), 95, 96, 97 or 106, subsections (1) and (4) of section 113, or section 114, 115, 116, 117 or 117.1, is guilty of an offence and on summary conviction is liable to a fine of not more than one thousand dollars.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 23; S.M. 1975, c. 37, s. 17; S.M. 1977, c. 23, s. 21; S.M. 1980, c. 60, s. 26; S.M. 1980-81, c. 38, s. 9; S.M. 1982, c. 18, s. 21; S.M. 1982-83-84, c. 93, s. 17.

Further offence.

117(2) A landlord who gives a tenant of his a notice to quit because

(a) of the tenant's complaint to any governmental authority as mentioned in clause (a) of subsection (2) of section 113; or

(b) of the tenant's attempt to secure or enforce his legal rights;

is guilty of an offence and on summary conviction is liable to a fine as provided under subsection (1).

En. S.M. 1970, c. 106, s. 3.

Order to correct offence.

117(3) Where a person is found guilty of an offence under subsection (1), the court may in addition to imposing a fine

(a) where the offence arises out of a failure to pay moneys, order the offender to pay such moneys forthwith; and

(b) where the offence arises out of the doing of anything forbidden under the Act, order the offender to take such action as may be necessary to correct the offence.

En. S.M. 1972, c. 39, s. 11.

Order to pay money.

117(4) Where an order made under subsection (3) requires payment of moneys by the offender, the order may be filed in the County Court of the district in which the offence occurred; and when so filed, the order shall for all purposes be deemed a judgment of the County Court and enforceable as such.

En. S.M. 1972, c. 39, s. 11.
S.M. 1970, c. 106, s. 3; Am. S.M. 1971, c. 35, s. 23; S.M. 1972, c. 39, s. 11; S.M. 1975, c. 37, s. 17; S.M. 1977, c. 23, s. 21; S.M. 1980, c. 60, s. 26; S.M. 1980-81, c. 38, s. 9; S.M. 1982, c. 18, s. 21; S.M. 1982-83-84, c. 93, s. 17.

Threats and harassment.

117.1 No landlord of residential premises, and no person acting on behalf of the landlord shall, directly or indirectly, coerce, threaten, intimidate or harass a tenant of the residential premises or any member of his family

(a) with a view to deterring the tenant from making a complaint, application or objection under this Act or The Residential Rent Regulation Act or intervening in any such complaint, application or objection or launching an appeal under The Residential Rent Regulation Act or lodging a complaint or application under any other Act of the Legislature; or

(b) as retaliation against the tenant for making a complaint, application or objection under this Act or The Residential Rent Regulation Act or intervening in any such complaint, application or objection or launching an appeal under The Residential Rent Regulation Act or lodging a complaint under any other Act of the Legislature.

En. S.M. 1982, c. 18, s. 22.

Standard form of tenancy agreements.

118 (1) The Lieutenant Governor in Council may by regulation prescribe the form of any written tenancy agreement for residential premises and the form of any renewal thereof; and every tenancy agreement in writing or otherwise shall be deemed to be in the form as prescribed.

En. S.M. 1980, c. 60, s. 27.

Certain terms prohibited.

118(2) Any term or condition in a tenancy agreement

(a) that is not permitted by or contained in, a form prescribed under subsection (1); and

(b) that contravenes any of the provisions of this Act;

is void and has no effect.

En. S.M. 1970, c. 106, s. 3.

Tenancy agreement may contain other provisions.

118 (2.1) Notwithstanding subsection (2), a tenancy agreement may contain provisions other than those set out in the written tenancy agreement prescribed under subsection (1) if

(a) the provisions are not inconsistent with any provision of this Act or of The Condominium Act; or

(b) the provisions are not inconsistent with or repugnant to any provision of the written tenancy agreement prescribed under subsection (1).

En. S.M. 1980, c. 60, s. 28.

Offence.

118(3) Where a landlord includes in a tenancy agreement any term or condition that contravenes any provision of this Act or the regulations, he is guilty of an offence and on summary conviction is liable to a penalty prescribed under subsection 117(1).

En. S.M. 1975, c. 37, s. 18.
Am. S.M. 1970, c. 106, s. 3; S.M. 1975, c. 37, s. 18; S.M. 1980, c. 60, ss. 27 & 28.

Request by tenant for repairs.

119(1) Where a tenant requests his landlord or an agent of the landlord to carry out or make reasonable repairs to the residential premises occupied by the tenant and the landlord refuses or neglects to carry out or make those repairs, the tenant may notify the rentalsman for the area of the failure or refusal.

En. S.M. 1970, c. 106, s. 3.

Failure to make repairs.

119(2) Upon receipt of a notification under subsection (1), the rentalsman shall endeavour to resolve the problem between the landlord and the tenant and if the rentalsman fails in his attempt to have the landlord carry out or make the repairs that the rentalsman has determine to be reasonable and should be made, the tenant shall pay the rent as it falls due to the rentalsman to be held in trust by him until the repairs are carried out or made.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1980, c. 60, s. 29.

Effect of payment to rentalsman.

119(3) Payment of rent under subsection (2) to the rentalsman and not to the landlord does not constitute a violation or failure by the tenant to pay his rent.

En. S.M. 1970, c. 106, s. 3.

Notification by rentalsman.

119(4) Where, under subsection (2), a tenant pays rent to a rentalsman, the rentalsman shall in writing notify the landlord he has received the rent.

En. S.M. 1970, c. 106, s. 3.

Retention and payment of moneys by rentalsman.

119(5) Subject to subsection 85(3.2) and (3.3), upon receiving rent under subsection (2) the rentalsman shall estimate the cost of repairs in respect of which the matter arose and that the rentalsman considers reasonable, and as the rent is paid shall retain

(a) one month's rent, or

(b) twice the estimated cost of the repairs;

whichever is the greater, until the repairs are completed to his satisfaction, and shall forward the amount retained to the landlord when the repairs are completed to teh satisfaction of the rentalsman.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1980, c. 60, s. 30.

Appeal.

119(6) Where pursuant to subsection (2) the rentalsman makes a determination and the landlord or tenant, as the case may be, is dissatisfied with the determination, he may within thirty days of the date of the determination appeal the determination to a judge of the County Court; and the judge may make such order with respect to the determination as to him seems just and reasonable.

En. S.M. 1970, c. 106, s. 3.

Return of deposit to landlord.

119(7) Subject to subsections 85(3.2) and (3.3), where under this section a landlord is requested to make reasonable repairs to residential premises occupied by a tenant and the time for appeal under subsection (6) has expired or an appeal taken by the landlord is unsuccessful and the landlord fails or refuses or neglects or continues to fail, refuse or neglect to make the repairs, the rentalsman shall make or cause the repairs to be made and pay the costs thereof from the moneys retained by him under subsection (5).

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1980, c. 60, s. 31.
S.M. 1970, c. 106, s. 3; Am. S.M. 1980, c. 60, ss. 29-31.

Mediation and arbitration by rentalsman.

120(1) In the event of any dispute, other than a dispute referred to under subsection 103(9), between a landlord and a tenant, either the landlord or the tenant or both, may refer the dispute to the rentalsman, who shall

(a) endeavour by mediation to settle the dispute; or

(b) with the written consent of the landlord and the tenant, arbitrate the dispute.

En. S.M. 1982-83-84, c. 74, s. 9.

Rentalsman's findings final and binding.

120(2) Where under subsection (1), the rentalsman acts as an arbitrator, his findings are final and binding on both the landlord and the tenant; and The Arbitration Act does not apply to the arbitration.

En. S.M. 1982-83-84, c. 74, s. 9.

121 Repealed. S.M. 1982, c. 18, s. 23.

Powers under Manitoba Evidence Act.

121.1(1) For the purpose of carrying out the rentalsman's powers and duties under this Act, the rentalsman has the like powers and protection of a commissioner appointed under Part V of The Manitoba Evidence Act.

En. S.M. 1980, c. 60, s. 32; Am. S.M. 1982-83-84, c. 74, s. 10; S.M. 1985, c. 51, s. 22.

Rules of evidence not to apply.

121.1(2) The rentalsman in carrying out any mediation or arbitration, as the case may be, under this Act is not bound by the rules of evidence applicable in a court of law.

En. S.M. 1980, c. 60, s. 32; Am. S.M. 1982-83-84, c. 74, s. 11.
Am. S.M. 1982-83-84, c. 74, ss. 10 & 11; S.M. 1985, c. 51, s. 22.

Regulations.

122 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations ancillary thereto and not inconsistent therewith; and every regulation made pursuant to, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations

(a) prescribing forms to be used under this Act;

(b) prescribing duties other than those set out in this Act to be carried out by a rentalsman;

(c) prescribing rules of procedure for arbitration by a rentalsman;

(d) prescribing the rate of interest to be paid by landlords on security deposits and in any other case where interest is payable by a landlord to a tenant under the Act;

(e) respecting such other matters as he may deem necessary for the carrying out of the provisions of this Act and the regulations.

En. S.M. 1970, c. 106, s. 3; Am. S.M. 1980, c. 60, s. 33; S.M. 1982, c. 18, s. 24

Application of Act where room and board provided.

123(1) Where a person in any residential premises owned or operated by him for the purpose, provides both room and board in those premises for five or more tenants, the provisions of Part IV, to the extent that they may be reasonably applicable, apply to the room accommodation provided by the landlord.

En. S.M. 1970, c. 106, s. 3.

Application of subsec. (1).

123 (2) Notwithstanding subsection (1), Part IV does not apply where an employer is engaged in the construction or logging industry and directly or indirectly provides room and board or room only to an employee; but that Part does apply where room and board or room only are provided directly or indirectly by any person engaged in the mining industry.

En. S.M. 1977, c. 23, s. 22.
En. S.M. 1970, c. 106, s. 3; Am. S.M. 1977, c. 23, s. 22.

Declaratory order.

124 Any person may apply to the County Court for a declaratory order setting out his rights under this Act.

En. S.M. 1970, c. 106, s. 3.

Corporations as landlord.

125 Where a landlord is a corporation an officer of the corporation may, in any matter under this Part that is before a court affecting the corporation, appear and present the case of the corporation.

En. S.M. 1971, c. 35, s. 24.

Delegation of authority by rentalsman.

126 Where under this Part, any right, duty, power or obligation is conferred, imposed or given to the rentalsman, he may in writing delegate that right, duty, power or obligation to any other person employed by the government in the department administering this Act and any decision or order made by a person acting under the delegated authority shall be deemed to be a decision or order of the rentalsman.

En. S.M. 1977, c. 23, s. 23.

Exemption from civil liability.

127 No action lies, or shall be instituted, against

(a) & (b) Repealed. S.M. 1982, c. 18, s. 25.

(c) the rentalsman; or

(d) any other servant or agent of the government;

to recover any loss or damage alleged to have been suffered by any person as a consequence of any act or omission of those persons, done or omitted to be done, in good faith in carrying out the provisions of this Act or the regulations.

En. S.M. 1980, c. 60, s. 34; Am. S.M. 1982, c. 18, s. 25.

128 Repealed. S.M. 1982, c. 18, s. 26.

SCHEDULE

FORM 1
(Section 39)

NOTICE TO LANDLORD

ake notice, that under The Landlord and Tenant Act I wish to set-off against rent ue by me to you, the debt which you owe to me on your promissory note for dated (or as the case may be).

Dated this day of , 19 .

C.D. (tenant).

FORM 2
(Section 74)

WRIT OF POSSESSION

Canada,
Province of Manitoba,
To Wit:

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada, and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the sheriff for

Greeting.

Whereas, judge of the Court of Queen's Bench, by his order, dated the day of , 19 , made in pursuance of The Landlord and Tenant Act, on the complaint of against , adjudged that was entitled to the possession and ordered that a writ should issue out of our said court accordingly, and also ordered and directed that the said should pay the costs of the proceeding under the said Act, which by our said court have been taxed at the sum of dollars;

Therefore, we command you that without delay you caused the said of the said lands and premises with the appurtenances;

and we also command you that of the goods and chattels of the said within Manitoba you caused to be made the sum dollars, being the said costs so taxed by our said court as aforesaid, and have that money in our said court immediately after the execution thereof to be rendered to the said ;

and in what manner you have executed this writ, make appear to our said court immediately after the execution hereof;

and have there then this writ.

Witness the Honourable of our said Court of Queen's Bench, this day of , 19 .

(Signed)

Registrar of the Court of Queen's Bench (or Deputy Registrar of the Court of Queen's Bench)

En. S.M. 1982-83-84, c. 85, s. 30(2).

FORM 3
(Section 77)

SUMMONS FOR EVICTION

In the County Court of

In the matter of landlord, and tenant, and The Landlord and Tenant Act. To the above named

You are hereby summoned to appear before Judge of this Honourable Court, at his chambers in the or, in his absence, before a magistrate of the Province of Manitoba, at the same place, on day the day of , 19 , at the hour of o'clock in the noon to show cause why an order should not be made for the delivery up to the said , as landlord, of the possession of the premises mentioned in his demand, that is to say (here describe the premises as in the notice); and, further, to show cause why an order should not at the same time be made for payment by you of the rent alleged to be in arrear for said premises to said landlord, to be made or levied by distress or otherwise, and also as to the costs of these proceedings.

In default of you so appearing, the said landlord may proceed to obtain such order against you as to the judge or magistrate it may seem proper to grant.

Dated at , this day of , 19 .

By the Court.
Clerk

FORM 4
(Section 77)

ORDER FOR EVICTION

In the matter of landlord, and tenant, and The Landlord and Tenant Act.

Upon the application of the landlord, and upon hearing the evidence produced at the hearing, I do order that the said tenant do, upon the production to him of this order, forthwith deliver up possession of the premises in question, namely (described as in notice and summons), to the said landlord, or his proper agent or attorney, of whose authority the possession of this warrant shall be sufficient proof; and in case of refusal by said tenant so to deliver up possession, or of said tenant being absent or said premises vacant, I do hereby, in accordance with the provisions of the statutes in that behalf, authorize a bailiff of the County Court (or a bailiff of this court), with such assistance as he may require, forthwith to proceed to eject and remove the said tenant, together with his goods and chattels, if any, from and out of the said premises, and, whether said tenant is found in possession or said premises are vacant, and put the landlord in possession thereof, that the said landlord take and hold possession thereof freed from said demise; and I do further order that the said bailiff do make the rent in arrear for said premises, amounting to the sum of together with the costs of the levy therefor, and of all necessary proceedings in respect thereof, subject to the provisions of the said Act.

I further award the sum of dollars to the said landlord, as his costs of this proceeding, to be paid by said tenant or, in default of payment, to be proceeded for and recovered as allowed by law.

Dated at , this day of , 19 .

(Signed)
Judge (or Magistrate).

(Note: The order, when made by a judge, to be entitled in the court out of which the summons issued, otherwise such title to be dispensed with).
R.S.M., c. 136, Sch.; am. S.M. 1958 (1st Sess.), c. 31, s. 1; am.

FORM 5

NOTICE TO TENANT

To
(Name of Tenant)

I hereby give you notice to deliver up possession of the premises

(identify the premises)

which you hold of me as tenant, on the day of next, or on the last day of the period of your tenancy next following the giving of this notice for the following reason

Dated this day of , 19 .

(Landlord)

En. S.M. 1970, c. 106, s. 4.

FORM 6

NOTICE TO LANDLORD

To
(Name of Landlord)

I hereby give you notice that I am giving up possession of the premises

(identify the premises)

which I hold of you as tenant, on the day of next, or on the last day of the period of my tenancy next following the giving of this notice for the following reason:

Dated this day of , 19 .

(Tenant)

En. S.M. 1970, c. 106, s. 4.

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MANITOBA REGULATION 226/85

BEING A REGULATION UNDER SECTION 122 OF THE LANDLORD AND TENANT ACT RESPECTING PROCEDURES NECESSARY FOR THE CARRYING OUT OF THE PROVISIONS OF THAT ACT AND THE REGULATIONS

RÈGLEMENT DU MANITOBA 226/85

RÈGLEMENT PRIS EN APPLICATION DE L'ARTICLE 122 DE LA LOI SUR LE LOUAGE D'IMMEUBLES CONCERNANT LES MESURES D'APPLICATION DE LADITE LOI ET DE SES RÈGLEMENTS

November, 1985
novembre 1985

MANITOBA REGULATION 226/85

BEING A REGULATION UNDER SECTION 122 OF THE LANDLORD AND TENANT ACT RESPECTING PROCEDURES NECESSARY FOR THE CARRYING OUT OF THE PROVISIONS OF THAT ACT AND THE REGULATIONS

(Filed October 22, 1985)

1 That any person designated as rentalsman pursuant to subsection 85(1) of the Act, shall take direction from and report to the Director, Landlord and Tenant Affairs.

2 That any delegation made by any rentalsman pursuant to section 126 of the Act, without the written approval of the Director, Landlord and Tenant Affairs is subject to and may be rescinded, amended or qualified by the Director, Landlord and Tenant Affairs.

Printed by the Queen's Printer for the Province of Manitoba

MANITOBA REGULATION 37/85

BEING A REGULATION PRESCRIBING THE RATE OF INTEREST TO BE PAID BY LANDLORDS TO TENANTS UNDER THE LANDLORD AND TENANT ACT

(Filed February 7, 1985)

1 The rate of interest to be paid by a landlord to a tenant on security deposits, and in any other case where interest is payable by a landlord to a tenant under The Landlord and Tenant Act shall be amended on January 1 and July 1 of each year by the calculation of subtracting 4 percentage points from the average Bank of Canada prime rate in the six month period from June 1 to November 30 for the January 1 rate; and the six month period from December 1 to May 31, for the July 1 rate.

2 Manitoba Regulation 184/80 is repealed.

3 The first calculation shall be made as at January 1, 1985.

Printed by the Queen's Printer for the Province of Manitoba

Manitoba Regulation 183/80

BEING A REGULATION UNDER THE LANDLORD AND TENANT ACT RESPECTING FORMS FOR USE UNDER THAT ACT.

(Filed October 7, 1980)

1 A standard residential tenancy agreement shall be in accordance with Form 7 as amended herein in Schedule A attached hereto.

2 A condition report to which reference is made in section 6 of the standard residential tenancy agreement shall be in Form 8 of Schedule A.

3 A renewal of a tenancy agreement shall be in accordance with Form 9 of Schedule A.

4 Manitoba Revised Regulation L70—R1 is repealed.

Printed by the Queen's Printer for the Province of Manitoba

SCHEDULE "A"

Form 7

STANDARD RESIDENTIAL TENANCY AGREEMENT

Being a form for all written residential Tenancy Agreements between Landlord and Tenant in Manitoba; pursuant to subsection (1) of section 118 of The Landlord and Tenant Act.

IN THIS TENANCY AGREEMENT made in duplicate the day of , 19

Landlord.

BETWEEN

(name, address and phone number) referred to as the Landlord

Tenant.

AND

referred to as the Tenant

IT IS AGREED THAT

The Landlord will rent to the Tenant and the Tenant will rent from the Landlord the premises known as

Premises.

referred to as the rented premises

pe of Tenancy

THE TENANCY IS TO COMMENCE , 19 , and to expire on , 19 .

(Leave expiry date blank if the Agreement is for a periodic tenancy and no set term is intended.)

Rent.

THE TENANT WILL PAY RENT to the Landlord at the rate of $ per in advance, for the duration of the tenancy. The rent due in the first instance being $ (pro-rated as necessary) and thereafter $ payable on the day of each

(state due day/date for rent payment)

IT IS FURTHER AGREED THAT

Other Occupants.

1 In addition to the tenant(s) only the following other persons may occupy the rented premises

1	4
2	5
3	6

together with any natural increase in the tenant's family but in any event not exceeding a total of persons.

Security Deposit

2 The Landlord hereby acknowledges the receipt from the Tenant, on the signing of this Agreement, of a Security Deposit of $, being an amount not in excess of one half on one month's rent, which sum the Landlord will hold in trust, for the Tenant, as a security against the breach of those parts of this Agreement pertaining to arrears of rent and the Tenant's responsibility for cleanliness and damage. The Landlord will return this deposit to the Tenant within 14 days of the termination of the tenancy, with interest as may be prescribed from time to time by Regulation, compounded annually. If, for valid reason, the Landlord disputes the return of the Security Deposit, the Landlord shall forthwith comply with the provisions of Section 87(1.2) of The Landlord and Tenant Act. Under no circumstances will the Security Deposit be applied as part of the rent by the Tenant without the prior written consent of the Landlord.

Services.

3 The Tenant will pay, on demand, to the appropriate authority, the costs of the following services e.g. certain public utilities: — as supplied at the commencement of this tenancy in respect of the rented premises.

all others not listed being the Landlord's responsibility.

Amenities.

4(1) The following privileges, amenities and facilities are the right of the Tenant and are granted to the Tenant for the duration of this Tenancy Agreement, the cost being included in the rent.

4(2) The following privileges, amenities and facilities are reserved to the Landlord or his designate and are not included within the scope of this Agreement.

Providing name and address to Tenant.

5(1) The Landlord shall provide to the tenant a copy of section 100 to 103 inclusive of The Landlord and Tenant Act together with the legal name of the Landlord and his address for service.

Conditions of Notice and Termination.

5(2) Unless otherwise agreed upon at the time a notice is given, this agreement may be terminated by

the Landlord giving notice in writing to the Tenant; or

the Tenant giving notice, either orally or in writing, to the Landlord.

(Insert above any special notice provisions or state Statutory requirements)

Condition of Rented Premises.

6 An inspection of the premises may be made by both parties, or their agents, or their representatives, and the condition of the premises recorded on the attached condition report and signed by both persons present at the inspection. This inspection may be made prior to the commencement of the Tenancy and can be referred to in deciding, as may be necessary, the disposition of the Security Deposit at the termination of the Tenancy and although this inspection in no way reduces the Landlord's responsibility to repair and maintain as in section 14 of this Agreement, no promises for alterations, redecorations or remodelling will be binding unless noted on the attached Condition Report at the time of the inspection by both parties present.

Observance of Statute and By-laws.

7 Such requirements as are and may be enacted in law will be observed by all parties to this Agreement in respect of health, sanitation, fire, housing and safety standards.

Disputes and Arbitration.

8 In the event of any dispute between the Landlord and Tenant, either party or both may refer the dispute to the Rentalsman for the area, who, it is understood, will endeavor by mediation to settle the dispute. If the Rentalsman is unsuccessful in mediating the dispute he is obliged to refer the matter to the Director of Arbitration.

Care by Tenant.

9 The Tenant is responsible for the ordinary cleanliness of the rented premises, the amenities and facilities provided under section 4 of this Agreement, and for the repairs of damage caused by his willful or negligent conduct or that of persons who are permitted on the premises by him.

Use.

10 The Tenant will use the rented premises for residential purposes only and will not carry on, or permit to be carried on, any trade or business without the written consent of the Landlord.

Behavior.

11 The Tenant, his family or his guests will take all reasonable precaution to avoid causing a nuisance or disturbance to other tenants in the same building.

Sublet.

12 The Tenant has the right to sublet, assign, or otherwise part with possession of the rented premises, subject to the consent of the Landlord. Consent will not be arbitrarily or unreasonably withheld on proper application, and provided the form of assignment and acceptance, which forms part of this Agreement, is completed.

Note: See footnote (1).

Rules and Regulations.

13 The Tenant will observe, and comply with, the Landlord's Reasonable Rules and Regulations which may be attached to, and form part of, this Agreement with such reasonable variations and modifications as may be added from time to time by way of notice from the Landlord to the Tenant.

Care by Landlord.

14 The Landlord is responsible for providing and maintaining the rented premises, the amenities and facilities provided under section 4 of this Agreement in a good state of repair and fit for habitation during the tenancy, notwithstanding that any state of disrepair existed to the knowledge of the Tenant before this Tenancy Agreement was entered into.

Tenant's Copy of Agreement.

15 A fully executed duplicate copy of this Agreement will be delivered to the Tenant by the Landlord within twenty-one days after execution or within twenty-one days of the Tenant's delivery of the Agreement to the Landlord for execution; and where a copy of the Agreement is not delivered within the time specified, the Tenant's obligations under this Agreement will thereby cease.

Privacy.

16(1) The Landlord has a right of access

(a) to show the premises to prospective tenants at reasonable hours after notice to terminate the tenancy has been given;

(b) in the case of an emergency; and

(c) after giving written notice to the Tenant of at least twenty-four hours before the time of entry, which time will be specified on the notice and shall be during daylight hours.

16(2) Nothing in this section is to be construed by either party as prohibiting entry with the consent of the Tenant given at the time of entry.

Peaceful Use and Occupation.

17 The Landlord, in the execution of this Agreement, is exercising a lawful power, and in so executing, grants to the Tenant the right of the full use and occupation of the rented premises with a security of tenure, according to the terms of this Agreement.

Range of Agreement.

18 Wherever throughout this Agreement there is any mention of, or reference to, the Landlord or the Tenant, that mention or reference shall be deemed to extend to and include the heirs, executors, administrators, successors and assigns of the Landlord and the Tenant and sub-tenants of the Tenant as the case may be; and if the Landlord or Tenant shall be male, female, or a corporation, or if there be more than one Landlord or Tenant, the provision herein shall be read with all grammatical changes necessary. Further, the Landlord will advise the Tenant of any change of ownership within seven days of that change.

Signed, Sealed and Delivered.

WITNESS LANDLORD

WITNESS TENANT(S)

This Agreement is to be interpreted and executed with direct reference to The Landlord and Tenant Act and in conjunction with any Landlord's Rules and Regulations that may be attached hereto.

Any item or condition added to this Tenancy Agreement that contravenes any of the provisions of The Landlord and Tenant Act is void and has no effect.

Note: (1) Section 12 of this Tenancy Agreement may be omitted or cancelled where the premises are administered by or for the Government of Canada or Manitoba or a Municipality, or any agency thereof, developed and financed under The National Housing Act, 1954 (Canada).

Note: (2) Section 2 of this Agreement may be omitted; and if so omitted, section 2 should be lined diagonally across and be initialled by both parties to this Agreement.

ASSIGNMENT AND ACCEPTANCE

I (We) hereby assign all my (our) right, title and interest in and to the within Tenancy Agreement and the remainder of the term unexpired thereunder to _____ heirs and assigns, and do also hereby guarantee, and remain liable for the prompt payment of the rent and the performance of the agreements on the part of the Tenant as therein mentioned, in the event of default by the assignee. The assignor does further grant to the assignee the right of exclusive possession and peaceful use and occupation of the premises herein described as sub-tenant for the unexpired portion of the term.

WITNESS. . . . . .

WITNESS. . . . . .

IN CONSIDERATION of the above assignment and the consent thereto of the Landlord, I (we). . . . . hereby assume and agree to make all payments and perform all agreements and conditions of the within Tenancy Agreement by the Tenant therein named to be made and performed from the. . . . . day of . . . . . 19. . . and I (we) agree that all rights and remedies of the Landlord against the Tenant under said Tenancy Agreement be available against me (us) to all intents and purposes as if I (we) had been named Tenant therein and as such had executed same.

WITNESS this . . . . . day of . . . . . 19. . . .

WITNESS. . . . . .

WITNESS. . . . . .

CONSENT TO ASSIGNMENT

We hereby consent to the foregoing assignment of the Tenancy Agreement with the condition that no further assignment of the said tenancy agreement or subletting of the premises or any part thereof, shall be made without our prior consent.

Witness our hand and seal this . . . . . day of . . . . . 19 . . .

WITNESS. . . . . .

(Form 8)

RENTAL UNIT CONDITION REPORT

ŃT OR WRITE CLEARLY

TOP COPY TO TENANT
CARBON COPY TO LANDLORD

Good
Missing
Damaged

B – Broken
S – Scratched or Marked

		Date (1) Condition at Commencement of Tenancy		Date (2) Condition at Termination of Tenancy	
.TERIOR	Stucco and/or Siding				
	Front and Rear Entrance				
	Garbage Container(s)				
	Glass and Frames				
	Screens and Storm Windows				
	Grounds and Walks				
	Keys Issued				
	Keys Returned				
ITCHEN	Ceiling				
	Walls and Trim				
	Floor				
	Countertop				
	Cabinets and Doors				
	Range – Condition and Equipment				
	Sink and Stoppers				
	Closets				
	Refrigerator				
\SEMENT	Stair and Stairwell				
	Walls and Floors				
	Furnace, Water Heater and Plumbing				
IVING ROOM INING ROOM	Floor				
	Ceiling				
	Walls and Trim				
	Closets				

STAIRWELL AND HALL	Treads and Landings				
	Walls and Trim				
	Ceilings				
	Closets				
BATHROOM	Ceiling				
	Floor				
	Walls and Trim				
	Cabinets and Mirror				
	Tub, Sink and Toilet				
	Closets				
BEDROOMS	Floor, Walls and Trim				
	Closets, Ceilings				
	Lighting Fixture – throughout				
	General Condition – Cleanliness				

Address of Rented Premises

Tenant's Forwarding Address (after termination of Tenancy)

Landlord or Agent's Signature

(1)

(2)

Tenant's Signature

(1)

Tenant (Name – print)

(2)

N.B. – Further comment and detail e.g. furniture, rugs, drapes, appliances and promises as to decorating and alterations to be noted and initialled overleaf.

FORM 9

RENEWAL AGREEMENT

THIS AGREEMENT made in duplicate this day of A.D. 19

Between:

(landlord)

— and —

(tenant)

WHEREAS the landlord, by tenancy agreement dated 19 , rented to the tenant those premises known as Manitoba for a term of commencing on the day of 19 , and ending on the day of 19 .

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto agree that the said tenancy agreement and term shall be renewed for months as aforesaid at a rental of dollars ($) per month, commencing on the day of 19 , payable in advance, but that otherwise all other terms and conditions contained in the said tenancy agreement shall apply to this renewal.

THIS memorandum of renewal shall be appended to, read with, and form part of the tenancy agreement, which commenced on the day of 19 , and renewed for a further term.

....

WITNESS AS TO TENANT TENANT

Per .....

Landlord or Agent of Landlord

SCHEDULE

MANITOBA REGULATION 58/71

UNDER THE LANDLORD AND TENANT ACT

(Filed May 6, 1971)

1 The Rent Review Board function shall include the following:

(a) An examination of the condition and availability of residential rental accommodations;

(b) An analysis of the costs of construction, and maintenance of residential rental accommodations;

(c) A review of landlord and tenant relationships;

(d) A study of the practicability and desirability of rent controls;

(e) Alternative solutions to high rental problems;

(f) A determination of the availability of tradesmen to construct and maintain dwellings;

(g) An investigation as to the extent to which local by-laws affect the quality and availability of residential rental accommodations.

2 For the purpose of fulfilling its functions the Rent Review Board has all the powers of a commission of inquiry under Part V of The Manitoba Evidence Act and Part V of that Act applies to the inquiry.

3 That from time to time, on the certification of the Minister of Consumer, Corporate and Internal Services, the Minister of Finance pay from and out of tne Consolidated Fund

(a) living allowances and other travelling expenses of the board member;

(b) salaries and fees of such staff and employees as may be employed by the board;

(c) all other expenses incurred by the board in proceedings relating to the rent review;

(d) honoraria and remuneration to the board member in such amounts as the Lieutenant Governor in Council may direct.

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MANITOBA REGULATION 37/85

BEING A REGULATION PRESCRIBING THE RATE OF INTEREST TO BE PAID BY LANDLORDS TO TENANTS UNDER THE LANDLORD AND TENANT ACT

(Filed February 7, 1985)

1 The rate of interest to be paid by a landlord to a tenant on security deposits, and in any other case where interest is payable by a landlord to a tenant under The Landlord and Tenant Act shall be amended on January 1 and July 1 of each year by the calculation of subtracting 4 percentage points from the average Bank of Canada prime rate in the six month period from June 1 to November 30 for the January 1 rate; and the six month period from December 1 to May 31, for the July 1 rate.

2 Manitoba Regulation 184/80 is repealed.

3 The first calculation shall be made as at January 1, 1985.

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MANITOBA REGULATION 226/85

BEING A REGULATION UNDER SECTION 122 OF THE LANDLORD AND TENANT ACT RESPECTING PROCEDURES NECESSARY FOR THE CARRYING OUT OF THE PROVISIONS OF THAT ACT AND THE REGULATIONS

RÈGLEMENT DU MANITOBA 226/85

RÈGLEMENT PRIS EN APPLICATION DE L'ARTICLE 122 DE LA LOI SUR LE LOUAGE D'IMMEUBLES CONCERNANT LES MESURES D'APPLICATION DE LADITE LOI ET DE SES RÈGLEMENTS

vember, 1985
embre 1985

MANITOBA REGULATION 226/85

BEING A REGULATION UNDER SECTION 122 OF THE LANDLORD AND TENANT ACT RESPECTING PROCEDURES NECESSARY FOR THE CARRYING OUT OF THE PROVISIONS OF THAT ACT AND THE REGULATIONS

(Filed October 22, 1985)

1 That any person designated as rentalsman pursuant to subsection 85(1) of the Act, shall take direction from and report to the Director, Landlord and Tenant Affairs.

2 That any delegation made by any rentalsman pursuant to section 126 of the Act, without the written approval of the Director, Landlord and Tenant Affairs is subject to and may be rescinded, amended or qualified by the Director, Landlord and Tenant Affairs.

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